[HIGH COURT OF AUSTRALIA.]

CAMERON AND OTHERS . . . . APPELLANTS;
DEFENDANTS,

AND

HOGAN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *May* 24, 25, 28, 29.

SYDNEY, *Aug.* 3.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Voluntary Association—Political organization—Membership—Rights—Contractual relation—Not existing between members—Expulsion—Candidature for political election—Pre-selection.

The executive of a voluntary association, by passing an unauthorized resolution for the exclusion of a member of the association, or by failing to observe the rules governing the association's affairs, commits no breach of contract actionable either at common law or in equity, unless the member complaining has under the rules some civil right of a proprietary nature.

The plaintiff, who was a member of a political party, brought an action against the executive officers of the Party, a voluntary association. The defendants had refused to approve, endorse, or submit to ballot the plaintiff's nomination as a person seeking selection by the Party as its candidate at a State Parliamentary election then pending, and had by resolution excluded him from the Party. The plaintiff alleged that both these actions were breaches of the rules of the association. The assets of the association were employed solely for the purpose of furthering its political aims, and by reason of the defendants' action, although the plaintiff was returned to Parliament, he was not elected as leader of the State Parliamentary Labor Party and, therefore, did not receive the emoluments of that office. The plaintiff sought a declaration that he was still a member of the association, that his exclusion therefrom was wrongful, and that the non-endorsement of his candidature was wrongful, an injunction to restrain his exclusion from the association, and damages.

Held:—

(1) That the plaintiff had no such proprietary right or interest in the property of the association as entitled him to a declaration or an injunction in respect of his exclusion from the association.

(2) That the rules of the association did not operate to create enforceable contractual rights and duties between members, or between executive officers and members.

Decision of the Supreme Court of Victoria (*Gavan Duffy* J.): *Hogan* v. *Cameron*, (1934) V.L.R. 88, reversed.

APPEAL from the Supreme Court of Victoria.

Edmond John Hogan brought an action in the Supreme Court of Victoria against Donald Cameron as president of the Australian Labor Party, Victorian central executive, the two vice-presidents, the treasurer, the general secretary, the organizing secretary and eighteen members of the executive of such Party.

By his statement of claim the plaintiff alleged in effect that he was a member of the Australian Labor Party of the State of Victoria, which is hereafter referred to as the association; that prior to May 1932 he was a member of the Legislative Assembly of Victoria as a labor candidate, and was leader of the State Parliamentary Labor Party and Premier of the State of Victoria; that the defendants were the members of the central executive of the association, which was an unincorporated association of persons in Victoria, and was possessed of considerable assets; that as a member of the association the plaintiff was entitled jointly with other members to the property and assets of the association, and to the rights and advantages of such membership; on 5th September 1930 a special conference of the association was convened "to consider unemployment and related questions"; at such special conference certain decisions were promulgated, which included a declaration that no rationing should be introduced in any Government employment except with the consent of the union affected, a declaration against any reduction of wages or lengthening of hours of labor, and a demand that the Victorian Federal and State Parliamentary Parties give an assurance that they would comply with these resolutions, and that the executive be instructed to obtain such assurance; in October 1930 the State Parliamentary Labor Party gave the assurance asked for; in October

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1930 the central executive requested a personal assurance from the plaintiff in the terms of such decisions; that the decisions of the special conference were *ultra vires* and of no effect, and were contrary to rules 19 and 20 of the constitution of the association; that the request for the plaintiff's personal assurance amounted to a demand for a further or amended pledge, and was *ultra vires*; that the plaintiff, consequently, declined to comply with the request; that on 8th December 1930 the central executive decided that notification be sent to the plaintiff that his endorsement as a labor candidate would be "held up" in the event of his not complying with such request; that such decision was void and of no effect, and the plaintiff did not comply with such request; at the annual conference of the association held in April 1931 the decision was promulgated "that the action of the said executive in demanding personal assurances from the members of the said State and Federal Parliamentary Labor Parties be endorsed, and that the incoming executive be asked to enforce same"; that this decision was void and of no effect; purporting to act under this decision the executive by letter dated 15th June 1931 summoned the plaintiff to attend before it on 19th June 1931 to show cause why his endorsement as a labor member should not be cancelled; on 18th June 1931 the plaintiff informed the executive that by reason of ill-health he was unable to attend before it on the date named; by letter dated 22nd June 1931 the executive informed the plaintiff that if the assurance required was not given before 3rd July 1931 his endorsement as a labor candidate would be withdrawn; that on 3rd July 1931 at a meeting of the central executive it was ruled that the interpretation of the decision of April 1931 was that, when the time for endorsement was due, the endorsement of the plaintiff would be withdrawn, and the matter was referred to a special conference to be held on 25th July 1931; in May and June 1931 at a conference of the Premiers of all the States and the Commonwealth Government certain financial proposals known as the Premiers' Plan were agreed upon; at a special federal conference of the Australian Labor Party (of which the association is a branch) the decision of which is the supreme authority of the Australian Labor Party and binding on all members thereof, the resolutions that "this conference is opposed

to the Premiers' Conference Plan" and that "any member of the association openly supporting or assisting in the furtherance of the Premiers' Plan shall cease to be a member of the Australian Labor Party" were expressly negatived; on 30th January 1932 at the annual conference of the association held in Melbourne, it was decided that "all members be warned that any further support of the Premiers' Plan will result in exclusion from the Party"; that as this resolution was supported by many delegates whose unions were unfinancial, and as the conference was not convened in accordance with the rules of the constitution, the proceedings of the conference were unconstitutional and of no effect, and were moreover void as being contrary to the decision of the federal conference of 29th August 1931, and of the interpretation of the federal executive of 19th June 1931, and as inconsistent with the rules of the constitution; purporting to act on the decisions of April 1931, 3rd July 1931 and 30th January 1932 the central executive on 8th April 1932 decided that members of the Parliamentary Labor Party who supported the re-enactment of the Premiers' Plan would be excluded from the Labor Party; this decision was *ultra vires* and void, and contrary to a rule of the constitution; on 23rd April 1932, relying on the above decisions and on a paragraph of the constitution of the association, and without giving the plaintiff any opportunity of being heard or of defending himself, the central executive decided not to endorse the plaintiff as a labor candidate at the parliamentary elections to be held on 14th May 1932; that this decision was not in accordance with the constitution of the association, and was contrary to law and natural justice; the plaintiff was in fact elected to the Victorian Legislative Assembly on 14th May 1932, but by reason of his non-endorsement as a labor candidate he was not eligible for re-appointment to the leadership of the State Parliamentary Labor Party, and but for such non-endorsement the plaintiff would have been re-appointed to the leadership of such Party, and entitled to the emoluments attached to that position. The plaintiff also pleaded that he had been wrongly excluded from the association for alleged breaches of decisions of the above-mentioned conferences as interpreted by the executive, and had thereby been deprived of his rights in the property of the association and the advantages

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thereof. The plaintiff claimed, in substance, a declaration that he was at all times material and still was a member of the association, and entitled to his rights and privileges as such, a declaration that his exclusion from the association was wrongful, an injunction restraining the defendants, their servants and agents, from acting on or carrying into effect the exclusion of the plaintiff from his rights and privileges as a member of the association, a declaration that the non-endorsement of the plaintiff's candidature was wrongful, and damages.

By their defence the defendants alleged (*inter alia*) that the plaintiff had not been a member of the Australian Labor Party since July 1932; they denied that the motions brought up at the special federal conference of the Australian Labor Party that the conference was opposed to the Premiers' Conference Plan and that the plan was to be opposed by all members of Parliament were expressly negatived; they denied that delegates took part in the conference on 30th January 1932 whose unions were unfinancial, but that even if they did the decision of the conference was valid and binding upon the plaintiff for reasons which were stated; they admitted that on 23rd April 1932 the central executive decided not to endorse the plaintiff as a labor candidate at the parliamentary elections to be held on 14th May 1932, and that the plaintiff was elected to the Legislative Assembly at such elections, but was not eligible for re-appointment to the leadership of the State Parliamentary Labor Party; they denied that any emoluments were attached to the position of leader of the State Parliamentary Labor Party, and admitted that the plaintiff had been excluded from the association. They also alleged that the plaintiff was not entitled to bring the present action in respect of his exclusion from the association until he had exhausted the remedies by way of appeal to an annual conference provided by the constitution of the association, and by the federal constitution of the Australian Labor Party; that the plaintiff had not any right of property in any of the assets belonging to the association; that the central executive of the association in deciding on 23rd April 1932 not to endorse the plaintiff as a labor candidate at the election for the State Parliament on 14th May 1932,

and in deciding on 1st July 1932 that the plaintiff be excluded from the association, was acting in accordance with the constitution of the association.

By his reply the plaintiff (*inter alia*) said that on 19th June 1931 at a special meeting of the federal executive of the Australian Labor Party, whose decision was binding on all members of the Australian Labor Party of which the association is a branch, the president ruled that the Premiers' Plan was not in conflict with the financial decisions of the Labor Party, and that members of the Parliamentary Labor Parties were at liberty to use their own discretion when dealing with the Premiers' Plan.

Rules 18 and 19 of the constitution and platform of the Australian Labor Party dealt with the agenda items to be brought before the annual conference, and the procedure to be followed in bringing forward such matters. Rule 20 dealt with proposed alterations of the constitution, platforms or pledges, and rule 25 gave a right of appeal against a decision of the central executive to the annual conference.

The action was heard by *Gavan Duffy* C.J., who held that the central executive was not justified by the rules in refusing to endorse the plaintiff as a labor candidate for election, in that the correct procedure had not been followed, or in purporting to exclude him from the organization, as the power to expel was not vested in the central executive, but in other organs of the party; and held that this amounted to an actionable breach of contract between the plaintiff and the defendants, but that the plaintiff had no such substantial or proprietary interest in the property of the association as to justify either an injunction or a declaration, and gave judgment for the plaintiff for 1s. damages and costs. From this decision the defendants, by special leave, appealed to the High Court, the Court at the same time granting the plaintiff leave to cross-appeal.

Clyne (with him *Doyle*), for the appellants. The rules of the organization create no contract between the members of the association, and certainly create no contract between the plaintiff and the central executive, or between the plaintiff and the individual defendants. Moreover, the plaintiff had no proprietary interest in any

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of the assets of the association. The rules were not intended by the members of the association to create legal rights, but were framed to secure the objects of the party by effective action in Parliament. The rules are framed with this end in view, and contain no reference to any proprietary interest of the members. They are too vague to be enforceable as a contract even if they were so intended (*Clarke* v. *Earl of Dunraven*; *The "Satanita"* (1); *Baird* v. *Wells* (2)).

[RICH J. referred to *Wise* v. *Perpetual Trustee Co.* (3).]

There is no case in which damages have ever been recovered against a club by one of its members.

[STARKE J. Is there any case in which a shareholder has recovered damages against a company for breach of its rules as to internal management?]

There appears to be none. If this is a contract, there is no breach. Either the defendants were acting as agents of the whole body or they were not. If they were, they cannot be sued as principals; if not, then their acts were mere nullities, and in any event were not a breach of any contract with the other members. Even if there was a breach of contract, the Courts will not interfere unless there is some interference with proprietary rights, and in this case there was none.

[RICH J. referred to *In the Matter of St. James's Club* (4).

[DIXON J. referred to *Lens* v. *Devonshire Club* (5).]

The matter is dealt with in the following cases:—*Craigdallie* v. *Aikman* (6); *Forbes* v. *Eden* (7); *Long* v. *Bishop of Cape Town* (8); *Murray* v. *Burgess* (9); *Bishop of Natal* v. *Gladstone* (10); *M'Millan* v. *Free Church* (11); *Skerret* v. *Oliver* (12); *O'Keefe* v. *Cardinal Cullen* (13); *North London Railway Co.* v. *Great Northern Railway Co.* (14); *Rigby* v. *Connol* (15); *Baird* v. *Wells* (2); *Millican*

(1) (1897) A.C. 59.
(2) (1890) 44 Ch. D. 661.
(3) (1903) A.C. 139.
(4) (1852) 2 DeG. M. & G. 383; 42 E.R. 920.
(5) "The Times" Newspaper, 4th December 1914.
(6) (1813) 1 Dow H.L. 1; 3 E.R. 601.
(7) (1867) L.R. 1 Sc. & Div. 568 H.L.
(8) (1863) 1 Moo. P.C.C. N.S. 411; 15 E.R. 756.
(9) (1866) L.R. 1 P.C. 362.
(10) (1866) L.R. 3 Eq. 1.
(11) (1861) 23 D. (Ct. of Sess.) 1314.
(12) (1896) 23 R. (Ct. of Sess.) 468, at p. 490.
(13) (1873) I.R. 7 C.L. 319.
(14) (1883) 11 Q.B.D. 30.
(15) (1880) 14 Ch. D. 482.

v. *Sulivan* (1); *Wing* v. *Burn* (2); *Markt & Co.* v. *Knight Steamship Co.* (3); *Aitken* v. *Associated Carpenters and Joiners of Scotland* (4); *Macqueen* v. *Frackelton* (5); *Kearns* v. *Howley* (6). In an ordinary club case a member has a definite right to use the club property, but here the plaintiff had no right in any property of the association. The plaintiff had no right to any part of the funds of the association. Such funds had to be applied for the specified purposes, and there was no resulting trust for the subscribers. The rules gave the executive a power to approve and, therefore, to disapprove of the candidature of any member, and the plaintiff was not entitled to have his candidature endorsed as of course. The rules of the association provide a domestic tribunal to hear appeals from the executive, and in matters of the internal administration of the association the Court will not interfere.

Wilbur Ham K.C. and *O'Driscoll*, for the respondent. The Court has jurisdiction to interfere in a matter such as this (*Rigby* v. *Connol* (7)). No distinction is there drawn between an ordinary club and a proprietary club. The plaintiff had a remedy in damages (*Baird* v. *Wells* (8)). In the event of this association being wound up, the property of the association would have to be distributed among the members, including the plaintiff (*Young* v. *Ladies' Imperial Club* (9)). The plaintiff wanted a declaration or damages, and it was immaterial which he got. A declaration is applicable to a common law as well as to an equitable claim. There may be a question whether an injunction lies where there is no proprietary interest. If the body purporting to expel had no jurisdiction, the party complaining can go to the Courts, but if he appeals to another domestic tribunal he may be bound by his election. There is no appeal from the executive under rule 25 (*Amalgamated Society of Carpenters, Cabinet Makers and Joiners* v. *Braithwaite* (10)). The Court should have made a declaration in favour of the plaintiff (*Supreme Court Act* 1928 (Vict.) (No. 3783), sec. 62 (2); *Rules of*

(1) (1888) 4 T.L.R. 203.
(2) (1928) 44 T.L.R. 258.
(3) (1910) 2 K.B. 1021.
(4) (1885) 12 R. (Ct. of Sess.) 1206.
(5) (1909) 8 C.L.R. 673.
(6) (1898) 188 Pa. 116; 68 Am. S. R. 852.
(7) (1880) 14 Ch. D., at p. 487.
(8) (1890) 44 Ch. D., at p. 675.
(9) (1920) 2 K.B. 523, at p. 536.
(10) (1922) 2 A.C. 440.

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the Supreme Court 1916 (Vict.), Or. XXV., r. 5 ; *Cope* v. *Crossingham* (1) ; *Chapman* v. *Michaelson* (2)).

[*Clyne* referred to *McBride* v. *Sandland* (3).]

[DIXON J. referred to *Schnelle* v. *Dent* (4) ; *Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade Ltd.* (5).

[STARKE J. referred to *David Jones Ltd.* v. *Leventhal* (6).]

Had the executive acted in accordance with its rules the Court might not have been able to interfere (*Maclean* v. *The Workers' Union* (7)).

[STARKE J. referred to *Russell* v. *Bates* (8).]

Under the rules there are two ways by which a member can be expelled, and they are laid down with sufficient clearness : (1) The branch might have expelled him, and he could have appealed to the conference under rule 25, and (2) proceedings could have been taken under rule 25, and the conference could have expelled him direct. As regards branches, the central executive has a specified function and no other. The rules confer no power on the central executive to expel from the association. (Compare *Meyers* v. *Casey* (9).) The plaintiff's expulsion was contrary to natural justice. No sufficient notice of the charges against him were given, nor was any sufficient opportunity of meeting the charges afforded him. Subject to the plaintiff having a proprietary interest in the property of the association, he is entitled to an injunction. The conference which passed the resolutions for the alleged breach of which the plaintiff was expelled was invalidly constituted in that some branches received insufficient notice of the agenda, and some delegates represented unions which had not paid their dues. The plaintiff had not committed a breach of any rules for which he could be expelled at all. The federal body is the only body which had power to interpret the rules. The plaintiff had a right in law to have his name submitted to a pre-selection ballot (*Baird* v. *Wells* (10) ; *Young* v. *Ladies' Imperial Club* (11)). The only relevance of a proprietary right being interfered with is that the Courts will not grant an injunction

(1) (1908) 2 Ch. 624.
(2) (1909) 1 Ch. 238.
(3) (1918) 25 C.L.R. 69.
(4) (1925) 35 C.L.R. 494.
(5) (1921) 2 A.C. 438.
(6) (1927) 40 C.L.R. 357.
(7) (1929) 1 Ch. 602.
(8) (1927) 40 C.L.R. 209.
(9) (1913) 17 C.L.R. 90.
(10) (1890) 44 Ch. D., at p. 676.
(11) (1920) 2 K.B. 523.

unless such a right has been interfered with. Otherwise the matter is one of contract, and the Courts will take cognizance of it. The defendants are rightly joined (*Ideal Films Ltd.* v. *Richards* (1)).

[DIXON J. referred to *In the Matter of St. James's Club* (2).

[STARKE J. referred to *Lafond* v. *Deems* (3).]

In *Rose and Frank Co.* v. *J. R. Crompton and Bros. Ltd.* (4) there was a stipulation that the agreement was not to be legally enforceable.

Clyne, in reply. A political organization or a religious body whose funds are subscribed for the propagation of a principle is in a different position from a club, the sole object of which is to enable the members to enjoy the property purchased by the club funds. In the present case it is clear that the funds of the association were not intended to benefit the subscribers, and the plaintiff had no proprietary rights therein (*Amos* v. *Brunton* (5) ; *Macpherson* v. *Sutherland* (6) ; *In re Customs and Excise Officers' Mutual Guarantee Fund* ; *Robson* v. *Attorney-General* (7) ; *In re Printers and Transferrers Amalgamated Trades Protection Society* (8) ; *Deputy Federal Commissioner of Taxation* v. *Trustees of the Wheat Pool of Western Australia* (9)).

[EVATT J. referred to *Edgar and Walker* v. *Meade* (10).]

Large voluntary associations were regarded with disfavour by the common law (*Holdsworth's History of English Law*, 3rd ed., (1923) vol. IV., pp. 477, 478 ; *Skerret* v. *Oliver* (11)). The plaintiff cannot recover damages against these defendants (*Walker* v. *Sur* (12) ; *Hardie and Lane Ltd.* v. *Chiltern* (13) ; *Kelly* v. *National Society of Operative Printers' Assistants* (14)). A representative order should not be made in an action for damages (*Walker* v. *Sur*).

[DIXON J. referred to *London Association for Protection of Trade* v. *Greenlands Ltd.* (15).

(1) (1927) 1 K.B. 374.
(2) (1852) 2 DeG. M. & G. 383 ; 42 E.R. 920; preface to 95 R.R., p. V.
(3) (1880) 81 N.Y. 507.
(4) (1923) 2 K.B. 261 ; (1925) A.C. 445.
(5) (1897) 18 N.S.W.L.R. (Eq.) 184; 14 W.N. (N.S.W.) 69.
(6) (1885) 6 N.S.W.L.R. (Eq.) 46, 114 ; 2 W.N. (N.S.W.) 48.
(7) (1917) 2 Ch. 18.
(8) (1899) 2 Ch. 184.
(9) (1932) 48 C.L.R. 5.
(10) (1916) 23 C.L.R. 29.
(11) (1896) 23 R. (Ct. of Sess.), at p. 490.
(12) (1914) 2 K.B. 930.
(13) (1928) 1 K.B. 663.
(14) (1915) 84 L.J. K.B. 2236.
(15) (1916) 2 A.C. 15.

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[*O'Driscoll.* But a representative order may be made when a declaration is sought (*Annual Practice* 1931, Or. XVI., r. 9 (*n*).]

[Counsel also referred to *R.* v. *Cheshire County Court Judge and United Society of Boilermakers*; *Ex parte Malone* (1); *Chitty* on *Contracts*, 18th ed. (1930), pp. 297, 298; *Aberfeldie Gold Mining Co.* v. *Walters* (2); *Stiebel's Australian and New Zealand Company Law* (1913), p. 142; *Bridge* v. *Bowen* (3).]

[STARKE J. referred to *Russell* v. *Amalgamated Society of Carpenters and Joiners* (4).]

There is no evidence that the presence of unfinancial delegates affected the result.

O'Driscoll, by leave, as to a representative order. A representative order would be properly made in such an action as the present, and would not have the effect of making Hogan both a plaintiff and a defendant. In an action such as for goods sold and delivered, a representative order might have such an effect, but in a case of expulsion the claim is against all the members other than the plaintiff. But in any event a representative order is unnecessary, as the breach complained of is one by the central executive, each one of whom has been made a defendant, and each wrongdoer being made a defendant, a representative order is unnecessary.

Cur. adv. vult.

Aug. 3. The following written judgments were delivered:—

RICH, DIXON, EVATT AND MCTIERNAN JJ. This appeal is from a judgment of *Gavan Duffy* J. given upon the trial of an action in which the respondent was plaintiff, and the appellants were defendants. The judgment is that the respondent do recover against the appellants one shilling damages with costs. The appellants are the six officers and eighteen members who form the central executive of a voluntary association called the "Australian Labor Party State of Victoria," of which the respondent was a member. They were sued, according to the statement of claim, "as such members of the

(1) (1921) 2 K.B. 694.
(2) (1876) 2 V.L.R. (Eq.) 116.
(3) (1916) 21 C.L.R. 582.
(4) (1912) A.C. 421.

central executive." The respondent sought various forms of relief against them in respect of two matters. First, he complained that on 23rd April 1932 they had failed in the performance of a duty imposed upon them by the rules of the Party in reference to the approval or endorsement or submission to ballot of his nomination as a person seeking selection by the Party as its candidate at a State parliamentary election then pending for a constituency for which he was the sitting member. Second, he complained that on 1st July 1932 they resolved to exclude him from the Party, although, as he alleged, the authority under the rules to expel members did not reside in them, the grounds upon which they acted did not expose him to expulsion, and no adequate opportunity of answering the charges against him had been afforded to him.

Gavan Duffy J. held that, upon the proper interpretation of the rules of the Party, both of these two complaints were well founded. The central executive had not submitted the respondent's name to ballot, and his Honor construed the rules as requiring them to do so, unless they proceeded under provisions which in fact had not been invoked. He held that the rules did not give the central executive the power of exclusion which they had assumed to exercise. He decided that, both in failing to submit the respondent's name to ballot and in assuming without authority to exclude him from the Party, the appellants had committed breaches of the contract arising, as he considered, from membership of the Party, and expressed in its rules. For these breaches of contract he awarded nominal damages as a vindication of the respondent's legal rights. His Honor refused, however, to grant an injunction, because, in his opinion, the jurisdiction to grant that remedy depended upon the existence in the respondent, as a member of the Party, of some proprietary right or interest, and no sufficient proprietary right or interest in him appeared. He also refused to make a declaration of right.

The respondent denies the correctness of the conclusion that he possessed no sufficient proprietary right or interest to entitle him to relief by injunction, and, while supporting the award of damages, seeks by way of cross appeal an injunction restraining the appellants from excluding him from the Party. He further contends that a

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declaration of right might and should be made under Order XXV., r. 5, independently of the existence of any proprietary right or interest, because the power to make such a declaration is no longer to be exercised upon considerations affecting the authority of a Court of equity. (Compare *Chapman* v. *Michaelson* (1); *Langman* v. *Handover* (2); *Ruislip-Northwood U.D.C.* v. *Lee* (3).)

Judicial statements of authority are to be found to the effect that, except to enforce or establish some right of a proprietary nature, a member who complains that he has been unjustifiably excluded from a voluntary association, or that some breach of its rules has been committed, cannot maintain any action directly founded upon that complaint. For example, in *Forbes* v. *Eden* (4) Lord *Cranworth* said: "Save for the due disposal and administration of property, there is no authority in the Courts either of England or Scotland to take cognizance of the rules of a voluntary society entered into merely for the regulation of its own affairs." (Compare per *Jessel* M.R., *Rigby* v. *Connol* (5); per *Barry* J., *O'Keefe* v. *Cardinal Cullen* (6).) *Gavan Duffy* J. considered that such statements should be understood as relating only to the jurisdiction of Courts of equity. There are, however, reasons which justify the statement that, at common law as well as in equity, no actionable breach of contract was committed by an unauthorized resolution expelling a member of a voluntary association, or by the failure on the part of its officers to observe the rules regulating its affairs, unless the members enjoyed under them some civil right of a proprietary nature. As a generalization it expresses the result produced by the application of a number of independent legal principles: it is not in itself the enunciation or explanation of a rule or rules of the common law. One reason which must contribute in a great degree to produce the result is the general character of the voluntary associations which are likely to be formed without property and without giving to their members any civil right of a proprietary nature. They are for the most part bodies of persons who have combined to further some common end or interest, which

(1) (1908) 2 Ch. 612; (1909) 1 Ch. 238.
(2) (1929) 43 C.L.R. 334, at pp. 357, 359.
(3) (1931) 145 L.T. 208.
(4) (1867) L.R. 1 Sc. & Div. H.L., at p. 581.
(5) (1880) 14 Ch. D., at p. 487.
(6) (1873) I.R. 7 C.L., at p. 343.

is social, sporting, political, scientific, religious, artistic or humanitarian in character, or otherwise stands apart from private gain and material advantage. Such associations are established upon a consensual basis, but, unless there were some clear positive indication that the members contemplated the creation of legal relations *inter se*, the rules adopted for their governance would not be treated as amounting to an enforceable contract. (Compare per *Jessel* M.R., *Rigby* v. *Connol* (1), and per *Scrutton* L.J., *Rose and Frank Co.* v. *J. R. Crompton and Bros. Ltd.* (2).)

In the next place, the difficulty of framing an action by one member of a large body of persons for damages for breach of a contract constituted by his admission to membership has always been very great. Such a contract apparently is considered joint, and in common law in strictness it would have been necessary for the plaintiff to join all the members as defendants. It is true that his failure to do so could only be taken advantage of by the member or members sued by a plea of abatement. If the members of the body were very numerous, it might well become too difficult for a defendant to succeed upon such a plea. For the common law was that " the plea must accurately disclose the names of all the contracting parties so as to give a better writ ; and if a party be omitted or too many be stated, the plaintiff may take issue on the plea and will succeed on the trial " (*Chitty's Pleading*, 6th ed. (1837), p. 719). But a plaintiff might well hesitate on his side, and in fact no such action appears to be reported. Since the *Judicature Act*, the objection that co-contractors have not been joined must be taken by interlocutory proceeding, and cannot otherwise be relied upon (*Smith* v. *Auchterlonie* (3) ; *Tipping* v. *Richelieu* (4)). But if the objection is properly taken, it will seldom, or perhaps never, be possible to overcome it by constituting the defendants representative parties under Order XVI., r. 9. If the defendants were to represent the " association " as an unincorporated body, with a view to the plaintiff's recovering the damages exclusively from its funds, they would represent the plaintiff as well as the other members : see

(1) (1880) 14 Ch. D., at p. 487.
(2) (1923) 2 K.B., at p. 288.
(3) (1897) 23 V.L.R. 16 ; 18 A.L.T. 236.
(4) (1892) 18 V.L.R. 772 ; 14 A.L.T. 63.

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Kelly v. *National Society of Operative Printers* (1), per *Phillimore* L.J.; compare *R.* v. *Cheshire County Court Judge and United Society of Boilermakers* (2), per *Scrutton* L.J. If the defendants were sued on behalf of themselves and the members other than the plaintiff, the damages would be sought, not out of the association's funds, but against them personally. Such a representative proceeding would not fall within the rule: see *Hardie and Lane Ltd.* v. *Chiltern* (3), and the cases there cited.

But if these procedural difficulties were overcome, and an enforceable contract of membership of an unpropertied voluntary association were found to have been in contemplation, it would become necessary to consider whether a breach of contract had been committed, and who was responsible. If the member suing complained that his expulsion had been improperly resolved upon by a committee or other officers of the association, he would be met by two answers. If the resolution was not authorized by the rules, it would be simply a void act: his membership would be unaffected, and there would be no breach of contract. "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" (per *Isaacs* J., *Edgar and Walker* v. *Meade* (4)). If the member whose expulsion has been invalidly resolved upon asserts rights arising out of his membership, it may be that those who, relying upon the attempted expulsion, resist the assertion, will be led into the commission of acts which are tortious because they lack the justification which a valid expulsion may give them. For the tort the member may then sue. *Innes* v. *Wylie* (5) affords an example. But he cannot recover from the committee or the members for breach of contract. Cases in which a member, improperly expelled from a proprietary club, has recovered damages from the proprietor supply an illustration of another application of the same principle. Each member is entitled by contract with the proprietor to have the personal use and enjoyment

(1) (1916) 113 L.T. 1055, at p. 1060.
(2) (1921) 2 K.B., at pp. 709, 710.
(3) (1928) 1 K.B. 663.
(4) (1916) 23 C.L.R., at p. 43.
(5) (1844) 1 Car. & Kir. 257; 174 E.R. 800.

of the club, in common with other members, so long as he pays his subscription, and is not excluded from the club under its rules (per *Stirling* J., *Baird* v. *Wells* (1)). If a member is improperly expelled by the committee, his expulsion is invalid, he remains a member, and can enforce his contract with the proprietor.

If a member of a voluntary association complains, not of an invalid expulsion, but of some failure to observe the rules on the part of the committee or other officers, it would be necessary for the member complaining to show that the rules were intended to confer upon him a contractual right to the performance of the particular duty upon which he insists. It can seldom be the true meaning of the rules of any large association of such a kind that those undertaking office thereby enter into a contract with each and every member that they will execute the office in strict conformity with the rules. If, however, it were determined that the committee or the officers of a voluntary association in attempting to exclude the member complaining, or in some other respect, had committed a breach of contract, the remaining members of the association would not be responsible. The committee or officers may be agents for the members of the association. But if so, they are agents for all the members. If in the case of a member complaining they have violated the rules, they have exceeded their authority. Upon no doctrine of agency can one of the joint principals hold the others responsible. (See *Kelly* v. *National Society of Operative Printers* (2)).

In the present case the association is formed altogether for the promotion of political objects. It is an organized political party. Its members, who number very many thousands, consist of the members of Trades Unions which are affiliated with the Party, and of such persons as have been admitted to membership of that Party by a Branch after pledging themselves loyally to support the principles and constitution of the Party, and to vote for the selected labor candidate. Branches may be formed in any centre : one hundred and seventy Branches exist. Each affiliated Trade Union and the collective members of the Branches in each State electorate may send delegates to an annual conference, which is " the supreme

(1) (1890) 44 Ch. D., at p. 676.
(2) (1916) 113 L.T. 1055, per *Swinfen Eady* L.J., at p. 1058 ; per *Phillimore* L.J., at p. 1060 ; per *Bankes* L.J., at p. 1062.

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ruling authority within the State." An annual conference must elect from the delegates six officers and eighteen members to be the central executive, which is "the managing and administrative authority." It is to "administer the constitution according to the letter, as far as it goes, and where the letter fails, according to its spirit." An appeal lies to the annual conference from a decision of the central executive upon a charge against a member. The central executive is required to form at least five different sub-committees, one of which examines the accounts, and watches and advises upon the financial affairs of the Party, and another of which supervises selection ballots and controls the conduct of election campaigns. In every State constituency there is a State electorate council composed of delegates appointed by Branches, which, with the addition of delegates from affiliated Unions, becomes a campaign committee for the purpose of conducting election campaigns and ballots for the selection of candidates. The "Australian Labor Party State of Victoria" is an organization which itself forms part of a federal organization. There is a federal conference to which each State organization sends six delegates. Resolutions passed by it in accordance with the Party federal constitution are binding upon State organizations. There is also a federal executive composed of two delegates from each State. Appeals lie to it from decisions of State conferences if they affect the federal labor platform or policy, or the attitude thereto of a member, or if the State conference or executive gives leave to appeal. From the decisions of the federal executive an appeal lies to the federal conference. The revenue required to defray the expenses of all these bodies is raised through the Branches and the affiliated Unions. Upon affiliation a Union and a Branch must pay to the central executive a fee which goes from two shillings and six pence, if its members are not more than twenty-five, to forty shillings if they exceed a thousand. Every affiliated Union must then pay to the central executive for every male member ten pence a year in quarterly payments. Every Branch member, if an adult male, must pay two shillings a year to the Branch. But the Branch must pay four pence a year for every member to the central executive. The State electorate councils must also be paid twenty-five per cent of the membership contribu-

tions. These councils may impose an additional *per capita* levy. The State organizations bear the cost of the meetings of the federal conference and executive. The rules contain provisions for the banking of Branch funds, the preparation and audit of Branch accounts, and the submission by Branches to the central executive of audited balance-sheets. The central executive is required to submit an audited balance-sheet to the annual conference. The rules provide for the banking of the funds of an electorate council, and the presentation by the secretary of an audited balance-sheet at its annual meeting. The last balance-sheet of the central executive before the time of the grievances complained of in these proceedings showed a credit balance of £2,500. The assets apparently included approximately £1,400 owing to it by Branches, £400 at the credit of its bank account, furniture of the value of £200 and some shares in a printing company.

Under the rules the members of the Party obtain no advantage from the funds susceptible of personal enjoyment. The funds are devoted to the promotion of the political ends for which the Party exists. But the rules declare that "the collective membership is sovereign," and this is relied upon as implying that membership gives some voice in the application of the Party funds. As might be expected, the selection of candidates for Parliament is the subject of elaborate provision. Unfortunately, however, the rules upon the subject are confusedly drawn. One rule requires that all nominations for Party selection shall be admitted to ballot. Another empowers the central executive to withdraw any candidate on the ground of unfitness or unworthiness, after giving him an opportunity of defence before an investigating committee. Yet another provides that all candidates' nominations must be immediately submitted to the central executive for approval, or endorsement, or otherwise.

The respondent was duly nominated as a candidate for selection. Because of resolutions which the central executive had already taken in the course of acute differences relating to matters of political policy, the chairman ruled that the respondent was not eligible for re-endorsement, and a motion disagreeing with his ruling was lost. His nomination was not admitted to ballot. After some fluctuation of opinion, *Gavan Duffy* J. construed the rules as giving the central

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executive no absolute discretion to accept or reject the nomination, but only a power to reject after proceeding under the rule relating to withdrawal. It was for this reason that he held that, in failing to submit the nomination to a ballot of the members in the State electorate, the central committee did what amounted to, or gave rise to, a breach of contract for which the respondent was entitled to damages. But the question which arises first is whether the rules relating to the selection of party candidates were intended to operate at all as a contract. If the action be treated as a representative proceeding against all the members of the Party other than the respondent, it would be necessary for him to establish that the rules should be understood as a warranty by every member to every other who should be nominated for selection that his name would be admitted to ballot, unless it was withdrawn after proper opportunity for defence. If the action be treated as a proceeding against the members of the central executive who failed to submit the respondent's nomination for ballot, to establish a breach of contract it would be necessary for the respondent to show that the appellants, either by accepting office, or by adhering to the rules as members of the Party, engaged with him contractually as a member to perform their duties in relation to nomination in complete accordance with the rules. Neither of these interpretations of the rules appears to be warranted. Hitherto rules made by a political or like organization for the regulation of its affairs and the conduct of its activities have never been understood as imposing contractual duties upon its officers or its members. Such matters are naturally regarded as of domestic concern. The rules are intended to be enforced by the authorities appointed under them. In adopting them, the members ought not to be presumed to contemplate the creation of enforceable legal rights and duties so that every departure exposes the officer or member concerned to a civil sanction. The matter has not been the subject of much, if any, discussion in English cases. For American authority it is enough to refer to *McKane* v. *Adams* (1).

In adopting a resolution excluding the respondent from the Party, the central executive assumed a power which is not explicitly given to that body by the rules. *Gavan Duffy* J. rejected the

(1) (1890) 123 N.Y. 609, at pp. 612-614.

contention that from various provisions an intention sufficiently appeared that the central executive should be authorized to exclude members for good cause. He found it, therefore, unnecessary for him to consider the remaining grounds upon which the resolution of expulsion was attacked. He treated it as a breach of contract for which at least nominal damages were recoverable. This view has, in effect, been already dealt with in advance. For the resolution was either invalid or else effectual. If it was invalid, it is to be considered simply as a void and unauthorized act. Members, moreover, are not responsible at law to another member for an act of the committee not authorized by the rules. The committeemen themselves by attempting to do what, according to the hypothesis, they could not do, committed no breach of contract. It was contended, however, on behalf of the respondent that the appellants by their defence had admitted that the respondent had been in fact excluded from the association: accordingly, as it was admitted it was done, it would be enough to show that it was not lawfully done. This puts an extreme and erroneous meaning upon the appellant's pleading, which ought to be understood as expressing the actual position adopted by them, namely, that the resolution effected an exclusion of the respondent.

It follows that the judgment for nominal damages ought not to stand.

The question remains whether *Gavan Duffy* J. was right in refusing relief by way of injunction or declaration of right. The foundation of the jurisdiction to grant an injunction is the existence of some civil right of a proprietary nature proper to be protected. The property under the control of the central executive and that under the control of the branches might, if all the members concurred in dissolving the association, be distributed among them, but if so, it would be by reason of a decision under the rules authorizing that distribution. Except for this, the respondent has no interest capable of enjoyment. There is much to be said for the view that payments made by members to the Branch or by the Branch or the Union to the central executive or State electorate council are final: that they are subscriptions to an object, and that no resulting interest however contingent remains in the member. No doubt indirectly

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in choosing delegates members may affect the mode in which the fund is expended. But whatever view may be taken of the exact and technical situation of the legal and equitable property in the various assets " belonging " to the Party, it is reasonably clear that membership of the association carries with it no tangible or practical proprietary right. The association must be conducted, and money is needed to carry it on. There must be some margin of revenue over current expenditure, some continuing possessions for use by its officers, some rights incidentally acquired in process of fulfilling its objects. But the existence of such property is incidental and accidental. The organization is a political machine designed to secure social and political changes. It furnishes its members with no civil right or proprietary interest suitable for protection by injunction. Further, such a case is not one for a declaration of right. The basis of ascertainable and enforceable legal right is lacking. The policy of the law is against interference in the affairs of voluntary associations which do not confer upon members civil rights susceptible of private enjoyment. See *Watt* v. *MacLaughlin* (1).

For these reasons the respondent is not entitled to invoke the jurisdiction of the Courts of law in reference either to his complaint that his nomination for selection was improperly withheld from ballot, or that a resolution for his expulsion was adopted without authority or justification under the rules. In these circumstances the question, whether, upon the true meaning of the rules, the central committee acted in accordance with or contrary to them is not one of which the Court takes cognizance.

The appeal should be allowed. The judgment of the Supreme Court should be discharged. Pursuant to their undertaking the appellants should pay the respondent's costs of the appeal.

The action should be dismissed without costs.

STARKE J. An action was brought in the Supreme Court of Victoria by Edmond John Hogan against Donald Cameron and others, who were described as the central executive of a political party known as the Australian Labor Party, State of Victoria. Hogan claimed declarations that he was a member of the party, and entitled

(1) (1923) 1 I.R. 112, at pp. 116-118.

to his rights and privileges as such, that his exclusion or expulsion, or purported exclusion or expulsion from the Party was wrongful, and that his withdrawal from selection or his non-endorsement as a labor candidate at an election for members of Parliament in the State of Victoria was wrongful; an injunction restraining Cameron and others from acting on or carrying into effect the said exclusion or expulsion, or what purported to be an exclusion or expulsion, and from continuing to exclude him from his rights and privileges as a member of the party; damages, and such further and other relief as might seem just. *Gavan Duffy* J., who heard the action, awarded Hogan one shilling damages, and from this judgment special leave to appeal was given by this Court.

The action arises out of dissensions in the Australian Labor Party. The object of that party is the socialisation of industry, production, distribution and exchange, and its membership consists of members of affiliated industrial unions, and persons enrolled as members of the organizations who pledge themselves to uphold the constitution, platform and pledges of the organization. Branches of the Party may be established in any centre, and one method of joining the party is election by a Branch. All members of a Branch must on election sign the platform, pledge and constitution of the Party. An annual ticket of membership must be obtained; each ticket bears a declaration that the holder is pledged to loyally support the principles and constitution of the Australian Labor Party, and to vote for the selected labor candidate. The central executive is the managing and administrative authority elected by conference delegates, and the rules provide that it shall administer the constitution according to its letter so far as it goes, and where the letter fails, according to its spirit. The annual conference is the supreme ruling authority within the State constituted by delegates from (*a*) the Australian Labor Party membership in each State electorate, and (*b*) affiliated Unions as separate entities. The Australian Labor Party, State of Victoria, is also part of a larger organization known as the Australian Labor Party; it is a federal organization, and has a federal constitution, in which provision is made for federal conferences, to which each State is entitled to send six delegates, and a federal executive. But I must now return to the rules of the organization.

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Branch rules provide as follows:—"87. (*j*) No person shall be eligible to become or remain a member of the A.L.P. whose conduct or actions are contrary to the principles and solidarity of the Political Labor Movement, or if he violate the pledge of membership, or does not faithfully uphold to the best of his . . . ability the A.L.P. Constitution and Platforms and vote and work for the selected Labor candidates. 88. Any person guilty of disloyal or unworthy conduct may be . . . expelled upon a resolution of the Branch at a meeting of which the accused member has had seven days' notice in writing in which he shall be notified of the charges made against him, and the Central Executive notified of the fact of such expulsion. Such member shall have the right of appeal to the Central Executive." The constitution, rule 25, gives an appeal to annual conference by any member against the decision of the central executive respecting the imposition of any penalty or relative to any charge. The conference has power to censure, suspend for any period, or deprive of such rights and privileges under the constitution as it deems fit or expel any person or persons adjudged guilty. Under the federal constitution, the federal executive is competent to hear appeals from the decision of any State conference or State executive, where leave to appeal is granted to the appellants by the State conference or State executive concerned. But the federal executive is also competent to hear and decide appeals from the decisions of any State conference or State executive on any matters affecting the federal labor platform or federal policy, or the attitude of any member of the Australian Labor Party thereto. The federal executive decision is binding, subject to the right of appeal to the federal conference. Elaborate provisions are also made for a State electorate council, and the contesting of State and other elections. The central executive arranges for the selection of labor candidates. All candidates' nominations and all labor selections must be submitted to the central executive for approval and endorsement or otherwise. It has power to withdraw any candidate on the ground of unfitness for the position, or whose past career renders him in its opinion unworthy of confidence, provided that such candidate has first had an opportunity of defending himself before such investigating committee as the central executive approves.

Should any member resign from or leave the party and join any party opposed to the Labor Party and/or actively oppose the party, or fail by his own default to nominate after endorsed selection without permission from the central executive, he shall be declared expelled by the central executive. The funds of the party are dealt with in various rules. A small annual fee for membership is prescribed; the Branch pays an affiliation fee and certain dues to the central executive, and also a percentage of membership contribution to the State electoral council, and the Branches control what is left. It appears from the evidence that about July 1932 the central executive had assets in its hands or under its control of the value (approximately) of £2,500. But there is no evidence as to the financial position of the Branches, except that they owed the central executive approximately £1,400.

Hogan was for many years a member of the Australian Labor Party. He was also and still is a member of the Parliament of Victoria, and he was Premier of the State from the end of 1929 to 16th May 1932. A financial crisis developed in Australia towards the end of 1929. But in September of 1930 a special conference of the Australian Labor Party, State of Victoria, was held, and resolutions were passed that the Victorian Federal and State Parliamentary Parties give an assurance that they would not support or enforce or advocate dismissals, or reduction of wages, or extension of hours, and that the executive be instructed to obtain such assurance. The State Parliamentary Party decided to comply with this resolution; Hogan presided over the meeting of the Parliamentary Party, and stated that he concurred in the decision. But the central executive demanded a personal assurance from Hogan that he would comply with the resolution. He demurred, and objected that the demand was contrary to the rules of the party and that compliance with it would be contrary to his duty as a Minister of the Crown, and impossible in the financial condition of the State. In May and June 1931, a conference of representatives of the Governments of the Commonwealth and the States was held in Melbourne to consider the financial position, which had grown more acute. It is known as the Premiers' Conference. A scheme was agreed upon, involving the reduction of expenditure of all kinds, including wages, salaries, pensions and

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interest. It is known as the Premiers' Plan, and may be found in the *Commonwealth Year Book* 1933, pp. 884-897. The central executive declared its uncompromising opposition to the Premiers' Plan, and instructed all State Labor members to vote against such proposals. The Hogan Government was, however, committed by agreement at the conference to the plan, and was bound to implement it, by reason both of its agreement and of the necessities of the financial position. The central executive, however, persevered with its demand upon Hogan for the assurance already mentioned. In June of 1931, Hogan was informed that if the assurance were not given his endorsement would be withdrawn, but he remained adamant in his refusal. In August of 1931 a special federal conference was held. It was resolved that the reduction of wages, pensions and social services ran counter to Labor's platform, and could not be accepted as any part of Labor's policy, and that Federal and State Labor Parties be instructed that there should be no *further* reduction in wages, pensions and social services, and that proposals in this respect should be resisted. In October of 1931, the central executive asserted that Hogan was still infringing his pledge as a member of the Australian Labor Party, and advised him that his conduct rendered him liable under rule 87 (*j*) to be declared ineligible as a member of the Australian Labor Party, and required that he accept the resolution of the special federal conference. But nothing seems to have happened until April of 1932, when nominations were called from members of the Australian Labor Party eligible to contest selection ballots for the next State election. Hogan's nomination was lodged for his old seat, Warrenheip and Grenville. The central executive never endorsed his nomination, and withdrew it from the selection ballot. In May of 1932, the Hogan Government resigned. Hogan attributed its fall to the foolishness of the central executive, and want of loyalty on the part of the Minister whom he left in charge during his absence from the State. On 26th May 1932 the central executive sent a cable to Hogan, who was abroad at the time, calling upon him to " show cause against exclusion from party for breach last annual conference decisions regarding continued support portion Premiers' Plan re wages, pensions, social services." Hogan replied by cable asserting that the proposed action was contrary to

the rules, and declaring that he held members of the executive personally responsible for any action on their part. On 1st July 1932 the central executive resolved that Hogan be excluded from the party for his breach of the decisions of conference as interpreted by the executive.

In my opinion, no such power of exclusion or expulsion is conferred upon the central executive under the rules and regulations of the Australian Labor Party. The express powers of expulsion are contained in rules 57 and 88. That given in rule 88 is to the Branch executive and not to the central executive. That given by rule 57 has no application to this case : it relates to what I may call cases of disloyalty in connection with elections, and Hogan did not (following the words of rule 57) resign from or leave the Labor Party and join any party opposed to labor ; he did not, actively or at all, oppose the Labor Party, nor did he fail by his own default to nominate after endorsed selection without permission from the central executive. Indeed, it is not contended that the central executive acted or purported to act on rule 57. It is contended, however, that a necessary implication of the rules is that a power of exclusion or expulsion is conferred upon the central executive. It is the managing and administrative authority, and is empowered to administer the constitution according to the letter so far as it goes, and where the letter fails, according to its spirit. It may be that where there is not any property in which the members of a voluntary association have a joint interest, the majority may by resolution exclude or expel any one member (*Innes* v. *Wylie* (1)). But I cannot agree that any such authority is reposed in a chairman or committee, or other executive body, without express and explicit authority to that effect. A general authority to manage and administer the constitution of the association according to its letter, and where the letter fails, according to its spirit, cannot and does not, in my opinion, confer any authority to expel.

Has Hogan, however, any redress in a Court of law for such unauthorized act ? It may be unlawful in the sense that it is void (*Graham* v. *Sinclair* (2)). But to give him a right of relief at law

(1) (1844) 1 Car. and Kir. 257 ; 174 E.R. 800.
(2) (1918) 25 C.L.R., at p. 107.

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or in equity, Hogan must establish some breach of contract with him, or some interference with his proprietary rights or interests. As a general rule, the Courts do not interfere in the contentions or quarrels of political parties, or, indeed, in the internal affairs of any voluntary association, society or club. "Agreements to associate for purposes of recreation, or an agreement to associate for scientific or philanthropic or social or religious purposes, are not agreements which Courts of law can enforce. They are entirely personal. Therefore, in order to establish a civil wrong from the refusal to carry out such an agreement, if it can be inferred that any such agreement was made, it is necessary to see that the pursuer has suffered some practical injury, either in his reputation or in his property" (*Murdison* v. *Scottish Football Union* (1)). Contractual rights, therefore, appear to me out of the question. The rules of a voluntary association organized for political purposes are not agreements enforceable at law, or in other words, contracts. Members of such associations who have grievances must resort to the remedies and the redress afforded them by the rules of their associations, and not to the Courts of law. Further, the central executive acted or purported to act as a tribunal constituted and endowed under the rules with jurisdiction to exclude or expel members of the party; suppose that it wrongly assumed such jurisdiction and that its act is void, how can any contract be inferred between Hogan and the members of the central executive, whom he sues, binding them not to exert jurisdiction, or to expel him except in accordance with the rules? They are only acting or purporting to act as a tribunal established and organized under the rules, and for the purpose of enforcing them. Further still, the rules give an appeal from the central executive to the annual conference, and, finally, to the federal conference, and even if the rules were binding as a contract between Hogan and the members of the Australian Labor Party, there could, in my opinion, be no breach of that contract until Hogan had resorted to the remedies or redress provided by the rules for any unwarranted action on the part of the central executive. But Hogan also claims relief because his exclusion or expulsion from the Australian Labor Party deprives him of some proprietary or pecuniary right or interest.

(1) (1896) 23 R. (Ct. of Sess.) 449, at pp. 466, 467.

This is ground for relief well recognized by law as administered in Courts having equitable jurisdiction. *Gavan Duffy* J. was of opinion that the right or interest alleged by Hogan was so vague and unsubstantial that the Court would not be justified in intervening in protection of that right or interest. The Australian Labor Party raises a fund from the subscriptions of its members and otherwise, and owns a certain amount of assets represented by debts and furniture. But the association has no club-house or meeting hall, or any property of which the members have any personal use or enjoyment. The funds are appropriated and used for the advancement of the political purposes of the party, and for no other purpose. The collective membership of the party is sovereign according to the rules, and the administration of its funds is therefore under the final control of the Party. It is this slight interest, as a member of the Party, in the funds, upon which Hogan relies for the intervention of the Court, though he alleges no misuse or misapplication of those funds (*Osborne* v. *Amalgamated Society of Railway Servants* (1)). Such an interest, I agree with *Gavan Duffy* J., is too unsubstantial to warrant interference by any Court by way of injunction, involving in case of disobedience, contempt and punitive orders. It seems to me in such circumstances that Hogan should have sought redress for his undoubted grievances in the remedies provided by the rules themselves, namely, appeal to the annual conference, and, if necessary, to the federal conference.

There remains for consideration Hogan's claim for a declaration that the withdrawal, cancellation or non-endorsement of his nomination as a labor candidate for the State electorate of Warrenheip and Grenville was wrongful, and for damages in respect thereof. Hogan was in fact elected as a member of Parliament for the Warrenheip and Grenville electorate, despite the fact that he was not endorsed as a labor candidate, but he alleges that his non-endorsement rendered him ineligible for re-appointment to the leadership of the State Parliamentary Labor Party and the emoluments attaching thereto. But the claim, in my opinion, is wholly untenable. The endorsement or non-endorsement of members of the Australian Labor Party as candidates for Parliament is a matter for the internal

(1) (1911) 1 Ch. 540, at p. 562.

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administration of the Party. The rules vest the power of endorsement or non-endorsement in the central executive, but that authority does not impose any contractual obligation upon the central executive towards any candidate. Endorsement in any case is not a contractual right which is enforceable in any Court of law by one member against his fellow members. The remedy for any grievance that Hogan has in respect of his non-endorsement must be sought and found in the rules of the party, and through the appropriate bodies set up by those rules for that purpose, such, for instance, as the annual conference and the federal conference.

In my opinion the appeal should be allowed, and the action dismissed.

Appeal allowed. Judgment of Supreme Court discharged. Action dismissed. Appellants to pay respondent's costs of the appeal pursuant to their undertaking.

Solicitors for the appellants, *Maurice Blackburn & Tredinnick.*
Solicitors for the respondent, *Luke Murphy & Co.*

H. D. W.