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Unincorporated Associations—Substantive Liability Not Affected by Statute

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living spouses. Where one or both of the spouses are dead the reason for the rule no longer exists, and where the reason does not exist, the rule should not be applied.

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UNINCORPORATED ASSOCIATIONS—SUBSTANTIVE LIABILITY NOT AFFECTED BY STATUTE

Plaintiff brought an action against the National Maritime Union under General Associations Law section 13 by naming the president and treasurer of the union as defendants. The complaint alleged publication of a libel in the official union newspaper; that the newspaper was under the direction and control of the union officers; that the libel was published in pursuit of the objectives of the union; and that the officers were acting in the course of, and within the scope of their employment. *HELD* (4-3): the complaint was defective, section 13 requires pleading and proof of actual authorization or ratification of the act complained of by all the members. *Martin v. Curran,* 303 N. Y. 276, 101 N. E. 2d 683 (1951).

Under Common Law an unincorporated association is not capable of suing or being sued in its common or association name. Unlike a corporation, it is not an artificial person and it has no existence apart from its members. *Ostrom v. Greene,* 161 N. Y. 353 55 N. E. 919 (1900); *Brown v. The Protestant Episcopal Church in the United States of America,* 8 F. 2d 149 (E. D. La. 1925); See note, 149 A. L. R. 510. Nor is it a partnership; the distinction being that a partnership is organized for acquisition of monetary gain, whereas a voluntary association is organized for moral, benevolent, social, or political purposes. *Lafonde v. Deems,* 81 N. Y. 508, (1880). For that reason no authority to create personal liability is implied or presumed from the mere fact of membership. A member is liable for acts done in the name of the association only on a strict agency theory; i.e., actual consent to, or ratification of the act. Gilmore, Partnership 44 (1911); Mechem, Elements of Partnership 14 (2d ed. 1920).

Although the legal status of unincorporated associations has not been changed, the modern view is that for some purposes they must be treated as juristic entities, capable of suing or being sued in the association name. Stevens, Private Corporations, 40 (2d ed. 1949). In England, labor unions were given the capacity to sue and be sued in their registered name by the Trade Union Acts of 1871 and 1876. *Taff Vale Railway Co., v. Amalgamated Society of Railway Servants,* (1901) A. C. 426. In this country federal legislation characterizing labor unions as entities was the basis for the decision in *United Mine Workers v. Coronado Coal Co.,* 259 U. S. 344, 42 Sup. Ct. 570, 66 L. Ed. 975, (1922),

that a union could be sued in its own name for torts committed during the course of a strike, and its strike funds made subject to execution. Without relying on legislation it was held in *Pandolfo v. Bank of Benson, et al.,* 273 Fed. 48 (9th Cir. 1921), that members of an unincorporated association of bankers were liable in their collective capacity for a libel published by an agent acting within the scope of his employment. These two federal decisions are now codified; by Federal Rules of Civil Procedure, Rule 17 (b), covering unincorporated associations generally; and by section 185 of the Labor-Management Relations Act, 29 U. S. C. A. sec. 185 (b), covering labor unions.

In New York a labor Union was treated as a juristic entity for the purpose of being a party plaintiff in an action under Gen. Assoc. L. sec. 12. *Kirkman v. Westchester Newspapers, Inc.* 287 N. Y. 373, 39 N. E. 2d 919 (1942). But it has been generally held that section 13 does not enable suit against an unincorporated association as an entity in contract actions, *McCabe v. Goodfellow,* 133 N. Y. 89, 30 N. E. 728 (1892); *Lightbourne v. Walsh,* 97 App. Div. 188, 89 N. Y. Supp. 856 (1904), or in an action for wrongful expulsion, *Glauber v. Patoff,* 294 N. Y. 583, 63 N. E. 2d 181 (1945); *Havens v. Dodge,* 250 N. Y. 617, 166 N. E. 346 (1929). The confusion which existed prior to the instant case was created by the courts which treated labor unions as juristic entities for the purpose of being sued in tort actions brought under the statute. *Tonelli v. Osman,* 186 Misc. 58, 54 N. Y. S. 2d 793 (Sup. Ct. 1945); *Lubliner v. Reinlib,* 184 Misc. 472, 50 N. Y. S. 2d 786 (Sup. Ct. 1944); *National Variety Artists, Inc., v. Mosconi,* 169 Misc. 982, 9 N. Y. S. 2d 498 (Sup. Ct. 1939); See note, 51 Yale L. J. 40, 47 (1941).

The instant decision settles the issue that in tort actions, as in the contract and wrongful expulsion cases, section 13 is a procedural measure only, and effects no substantive change in the liability of unincorporated associations. The statute only lessens the plaintiff's burden to the extent that he need not join and serve all the members as parties defendant. See, *McCabe v. Goodfellow, supra.* The result here is unfortunate in that it renders suit against a labor union a practical impossibility. However, the majority of the court felt, and, it is submitted, properly so, that if there is to be a change in the liability of unincorporated associations it must be done through legislation.

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