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Civil Practice—Pleading—Liability of Unincorporated Associations

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investigate or pass upon this matter while acting as an attorney for the Public Service Commission?" The question was answered negatively and Olmsted was granted leave to appear. The Appellate Division affirmed the order but solely on the ground that the County Court had no jurisdiction of the motion.¹⁵

The problem before the Court of Appeals was essentially one of characterizing the order of the County Court. The defendant argued that the proceedings below involved neither censure nor suspension, but only disqualification in a particular matter. A majority of the Court found no basis for that position and instead viewed the motion as an accusation of professional misconduct. It held that if the order was predicated upon a decision as to the merits of that accusation it was a futile attempt to exercise a power vested in the Appellate Division. The dissent accepted defendant's contention and held the view that this was not a disciplinary proceeding within the scope of Judiciary Law §90. The minority felt that, although the motion reflected indirectly upon counsel's professional conduct, it was incidental and not serious.

It appears that the error below resulted from the County Court misapprehending the basis for exercising its power to disqualify. Instead of confining itself to the question whether Olmsted did possess privileged information, which might be used to the defendant's prejudice, it made a finding as to the propriety of his appearance under the Canons of Ethics. The holding here makes it clear that such a question is cognizable only by the Appellate Division under Judiciary Law §90. Although defendant's motion only asked disqualification in this particular action it did not give the County Court the power to rule on a matter over which the Appellate Division has exclusive jurisdiction.

Pleading—Liability of Unincorporated Associations

Under the common law, an unincorporated association is not capable of suing or being sued in its common or association name. Unlike a corporation, it has no existence apart from its members.¹⁶ Nor is it a partnership; the distinction being that a partnership is organized for monetary gain, whereas a voluntary association is organized for moral, benevolent, social or political purposes.¹⁷ For that reason no authority to create personal liability is implied

15. *Erie County Water Authority v. Western New York Water Company*, 279 App. Div. 712, 108 N. Y. S. 2d 721 (4th Dep't 1951), cert. denied, 21 U. S. L. Week 3145.

16. *Ostrom v. Greene*, 161 N. Y. 353, 55 N. E. 919 (1900); *Brown v. The Protestant Episcopal Church*, 8 F. 2d 149 (E.D. La. 1925); See note, 149 A.L.R. 510.

17. *Lafonde v. Deems*, 81 N. Y. 508 (1880).

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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.*, on the basis of actual consent to, or ratification of the act.¹⁸

Until the last term of the Court of Appeals there was a question in New York whether the strict requirements of the common law had been modified by General Associations Law §13¹⁹ where the tort liability of labor unions was involved. The decision in *Martin v. Curran*²⁰ settled the problem by declaring the statute a procedural measure only, effecting no substantive change in the liability of unincorporated associations.

Plaintiff brought an action against the National Maritime Union under §13, alleging the publication of a libel in the Union newspaper. The complaint charged that the newspaper was under the direction and control of the Union's 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. A majority of the Court of Appeals held the complaint defective, stating that §13 requires pleading and proof of actual authorization or ratification of the act complained of by all the members of the association.

Although the legal status of labor unions 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 name²¹ In New York a labor union was treated as a juristic entity for the purpose of being a party plaintiff in an action under General Associations Law §12.²² Generally that concept has not

18. GILMORE, PARTNERSHIP 44 (1911); MECHEM, ELEMENTS OF PARTNERSHIP 14 (2d ed. 1920).

19. GENERAL ASSOCIATIONS LAW §13 provides: "An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section."

20. 303 N. Y. 276, 101 N. E. 2d 683 (1951).

21. *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344 (1922); STEVENS, PRIVATE CORPORATIONS 40 (2d ed. 1949).

22. §12: "Action or proceeding by unincorporated association.

An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association to recover any property, or upon any cause of action, for or upon which all the associates may maintain such an action or special proceeding, by reason of their interest or ownership therein, either jointly or in common . . ."

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been applied in actions brought under §13.²³ However, confusion has resulted from some lower court decisions which adopted the modern view where labor unions were sued in tort.²⁴

The instant decision makes it clear that the statute only lessens the plaintiff's burden to the extent that he need not join and serve all the members of an association as parties defendant. Although the result here is unfortunate, in that it renders suit against a labor union a practical impossibility, it is not without merit. The majority probably felt that any change in the liability of unincorporated associations must be accomplished through legislation. In light of the express language of the statute and previous decisions²⁵ in which it has been interpreted, the present §13 does not suit that purpose.

III. CONFLICT OF LAWS

Forum Non Conveniens

The courts of New York have no power to decline jurisdiction in an action involving residents or domestic corporations.¹ However, in those cases in which neither the parties nor the cause is "related"² to the forum, *forum non conveniens* is applicable.³ The doctrine is designed to protect the defendant in a civil action from suit in a place so inconvenient as to be oppressive,⁴ and rests not upon a principle of jurisdiction, but one of convenience, neces-

23. *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); *McCabe v. Goodfellow*, 133 N. Y. 89, 30 N. E. 728 (1892).

24. *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).

25. *Supra* n. 8.

1. N. Y. GEN. CORP. LAW §224.

2. GOODRICH, CONFLICT OF LAWS 23 (3rd ed. 1949).

3. In its operative area, *forum non conveniens* applies equally to actions at law, *Collard v. Beach*, 93 App. Div. 339, 87 N. Y. Supp. 884 (1st Dep't 1904); *Murnan v. Wabash Ry. Co.*, 246 N. Y. 244, 158 N. E. (1927); and equity, *Langfelder v. Universal Laboratories*, 293 N. Y. 200, 56 N. E. 550 (1944).

Surprisingly few states make any use of the doctrine. See Barrett, *The Doctrine of Forum Non Conveniens*, 35 CALIF. L. REV. 380, 382 (1947).

4. *Logan v. Bk. of Scotland* [1906] K. B. 141. See generally, Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COL. L. REV. 1 (1929).