ABBOTT v. SULLIVAN AND OTHERS

(1952) 1 ALL E.R. 226

In Baird v. Wells, (1890) 44 Ch. D. 661 the plaintiff was a member of the Pelican Club, and it was brought to the attention of the committee by, appropriately enough, the Marquis of Queensberry that the plaintiff had been guilty of conduct unbecoming a member in that while attending a prize-fight between two pugilists names Smith and Slavin, he had engaged a group of "roughs" (sic) to attend and hurl abuse, inter alia, at Slavin. Whether these unsportsmanlike (by 1890 standards) tactics had any tangible effect on the result of the contest does not appear from the report, but they were sufficient to cause the committee to expel the plaintiff from the Pelicans. Stirling J., after finding that the committee had acted ultra vires, decided that as the organization was a proprietary club, there was no right of property in the members, hence an injunction would not lie. However he did say there might be a right in damages for infringement of the member's contract right to have the personal use and enjoyment of the club so long as he complied with its rules.

Young v. Ladies' Imperial Club, (1920) 2 K.B. was a case in which the Court of Appeal granted damages, albeit nominal, (one farthing), to a lady expelled by a committee of the defendant, also a proprietary club, on the grounds that the resolution was ultra vires. It seems the plaintiff made an uncomplimentary remark about a fellow member, a Mrs. Lawrence. The executive, all ladies, met and expelled the plaintiff, but without bothering to notify the Duchess of Abercorn, who had agreed to serve on the executive for prestige purposes, with the proviso that she should not be troubled in any way. The executive stated the duchess wouldn't have come anyway if she had been notified, and submitted that, that should be the end of the matter. Scrutton, L.J. rejecting that contention, said "I think there is some public importance in making clear to club committees that they must act regularly in the expulsion of members."

The courts in these two cases felt damages should be awarded for ultra vires acts of committees resulting in infringement of the minor right to be able to enjoy the use of club property. Minor when compared to the major results of an invalid resolution in the recent case of Abbott v. Sullivan, by which a man was deprived of his livelihood for nearly a year, and yet the English Court of Appeal refused to allow damages.

In that case the plaintiff was a corn porter in the London docks. A prerequisite of such employment was that a man should be accepted by the Overside Corn Porter's Committee and placed on the register of corn porters. Upon acceptance, he agreed to submit to the jurisdiction of the committee and to observe its working rules. However, there was no written constitution or rules, and while all members of the committee were members of the Transport and General Worker's

Union, it was not a committee of the union in the sense of being part of its organization recognised and constituted by the union rules. A complaint was made against the plaintiff, and the committe after a hearing, fined him, being advised in their deliberations by Mr. Platt, a divisional officer of the union. Following the meeting the plaintiff followed Platt into the street and struck him. Platt promptly convened an emergency meeting of the committee which unaminously resolved that as the plaintiff was guilty of an unwarranted and unprovoked assualt on a trade union official, he should be removed from the register of corn porters. It should be mentioned at this point that Mr Platt was found by the trial judge to have been acting without malice in any degree or other improper notive. But, as Sir Raymond Evershed remarked, at 231, "It is, unfortunately, the not uncommon experience of human affairs that the greatest disasters and troubles flow from the actions of men acting under the best possible motives." The committee's resolution was effective September 24th, 1947. The plaintiff appealed to the area committee of the union who recommended that he should be reinstated on the register, and this was done on July 12, 1948. The plaintiff sued for, inter alia, damages, against Sullivan and Isett, who were two of the members of the nine-man committee; and Platt. Why Messrs. Sullivan and Isett were selected is somewhat of a mystery, and one on which the court is unable to throw any light.

All three members of the court agreed with the trial judge who found that as the committee did not have jurisdicition to take disciplinary action as a result of an allegation of a common assult in the street on a trade union official, the resolution of September 24th, 1947, was invalid. There being no written constitution, the onus was on the defendants to show that jurisdiction existed founded on an express or implied contract mutually entered into, and this they were unable to do.

Evershed, M.R., in the majority, felt that the plaintiff's claim had to rest on some contract, either express or implied, made by every corn porter with the committee, and which was broken by the passing of the invalid resolution; and he appears to have rested his decision on his inability to find any express or implied contractual term that a man once received into the company of corn porters should not thereafter be excluded by the committee from the company save for breach by him of some specified rules. Apparently in order to dispose of the Baird case and cases involving statutory tribunals where damages had been awarded, he rejected the notion that "in the case of a body such as that under discussion any relevant or useful analogy can be be found by reference to tribunals established by statute and having a limited jurisdiction conferred on them by statute, or by reference to proprietary clubs."

Morris, L.J., also in the majority, conceded that where there is an exercise of judical functions by a court, then inquiry may be taken as to whether the Court had knowledge or the means of knowledge

of its absence of jurisdiction. However he felt the committee should not be judged on this footing, not being a court. It is submitted this view is unreal, in this age of quasi-judicial functions by tribunals other than courts, and into whose jurisdiction an inquiry may generally be instituted.

Denning, L.J., dissenting, took his characteristic functional approach to the question, and disagreed with the trial judge's refusal to award damages because the latter could not see any legal peg on which to hang it. He thought there was a wrong because the committee should have known their act was ultra vires, and was unable to see why the same results should not flow whether the tribunal was statutory, domestic, within a proprietary club, or, as here, part of a voluntary association. He says "A mistake of law does not excuse a statutory tribunal; Houlden v. Smith (1850) 14 Q.B. 841 and it should not excuse a domestic tribunal."

The result of the case would seem to be that in order to ensure that actions for damages will not lie against them, should they act without jurisdiction, even if they so act in an arbitrary or capricious fashion, voluntary associations should refrain from committing to writing their organization, constitution, rules or regulations.

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