

234. The rules state you must?—Not with me.

235. Not even if Mr. Kirby swore that they do?—Not with me.

236. *Mr. Fisher.*] This new agreement with the Seamen's Union applies to all?—Yes.

237. What is the inference from that?—I do not know, I am sure. I was asked once or twice if I was in any society, and I said "No." I was never forced into it, and told if I did not join I would have to leave my ship, or anything like that.

FRIDAY, 28TH MAY, 1897.

*The Chairman* intimated that he had received an opinion from Mr. J. F. M. Fraser, solicitor, of Dunedin, in reference to the legal status of an unregistered benefit society, which he desired to read, as follows:—

OPINION.

I am instructed by Mr. Tregear to advise as to the effect of non-registration on a mutual benefit society, and generally as to the legal status of a member of the Union Steamship Company (Limited) Mutual Benefit Society.

The effect of non-registration of a society in the nature of a friendly society is governed by the rules and objects of such unregistered society, and it "is difficult to define and determine the exact status and position of an unregistered friendly society." A society such as the Union Steamship Company's Mutual Benefit Society unregistered appears to me to stand on the footing of a club or voluntary society. I have read Mr. Sim's written opinion on the points submitted to him. As a series of abstract propositions of law he is, in my opinion, correct in his views; but if his opinion is applied to the society in question, and to its rules, the many disadvantages of membership in this society become, in my opinion, very apparent.

Before referring to several of Mr. Sim's points, allow me to emphasize the controlling influence the company exercises over the society, and in doing so I do not suggest that the company is in the habit of exercising its full powers. I merely point out what it might do if the necessity for extreme action, in the opinion of the directorate, arose.

The governing body of the society is the committee. This consists of six members who are nominated by the company, six members who are elected by the men, and the thirteenth member is the managing director of the company. I apprehend that, if the company deems it necessary to control the appointment of six members of committee, the company would also take due precautions to nominate members whose interests would be more or less identical with the interests of the company; and I also assume that, if any crucial question arose wherein the interests of the majority of members conflicted with the interests of the company, the six nominated members would probably be, perhaps unconsciously, biassed in favour of the company's view. If the six elected members took the opposite view, the decision would rest in the hands of the managing director of the company. As all questions brought before the committee are decided by a majority of votes, it is therefore possible for the managing director of the company to control the committee, and so control the society, and, within certain limits, the allocation of the funds of the society—the limit in the case of a vote out of the benevolent fund being the amount lying at the bank to the credit of that fund.

The power of the company on the committee is to be gathered from Rules 23, 24, and 38. It nominates the treasurer (Rule 34). Its chairman and managing director are the two trustees (Rule 45). It has the power to veto any amendment of the rules (Rule 22); and it can further veto any attempt to dissolve the society and distribute the funds (Rule 77); and the directors, officers of vessels, and members of the company's staff on shore are eligible as honorary members (Rule 11). These honorary members have no beneficial interest in the funds of the society; yet these honorary members are given a vote on questions affecting the funds of the society (Rule 4). This is surely a most unusual and inequitable provision. If honorary members have no beneficial interest in the funds of the society they should certainly not be given any power to vote. The reason why this power should not be given to honorary members is perfectly obvious.

I notice that the rules make no provision for preventing a transference of liability from the company to the society. The only reference to this subject is to be found in the preface. The passage runs, "Benefits granted under the rules of the society shall not in any way relieve the company from its legal liability." I am unable to explain this sentence. I suppose, if a seaman has to be left behind sick by any of the company's vessels, he would get his £1 a week from the society; or, if killed by accident, caused by the actionable negligence of the company's officers, what is there to prevent the legal personal representative getting a substantial grant out of the benevolent fund of the society?

Mr. Sim did not feel called upon to explain, as one result of the non-registration of this society, that, owing to its want of definite status, its members are deprived of the cheap and expeditious methods of settling disputes provided by the Friendly Societies Acts, and are relegated to the ordinary legal methods and remedies. I may add that the cost of obtaining such redress as Mr. Sim refers to would be, in the case of the ordinary member, quite prohibitive. Moreover, the committee could utilise the society's funds, and drag a suitor from Court to Court at the society's expense.

The position of a member of an unregistered society such as this is as follows:—

The terms of the contract of membership are to be found in the rules of the society, and when a member joins he cannot escape the application of the rules unless he can show that there has been a breach of the rules, or that he has not been dealt with *bond fide*. "The plaintiff has made the law for himself in this case by becoming a member, and thereby submitting to the rules, and he must be bound by them. The case is governed by a written agreement to which the plaintiff has given his consent, and I base my decision on the clear written contract between the parties."

In this connection note the importance of the matter of "voluntary membership" as against membership "under pressure.")

There being no appeal within the union against any decision of expulsion, any member who is expelled and feels aggrieved must apply to the Supreme Court by way of motion for an injunction to restrain the committee from excluding him from membership; or commence an action in the ordinary way, and ask the Court for a declaration that the attempted act of expulsion is null and void, and for an injunction. The cost of this would be about £25 in the first instance, and the litigation might start in the Supreme Court and reach the Privy Council *via* the Appeal Court, and cost the plaintiff, say, £200, before he could get a final decision.

Also note that the rules do not provide for the giving of any notice to a member of a charge made against him, or the holding of any inquiry. This, however, would be required by the Courts, and is a condition precedent to any finding by the committee under Rule 10.

*Surrender Values.*—Rule 7 is the only rule dealing with surrender values, and it is vague in the extreme, whereas the rules should have been most explicit on this very important point. The passage in the rule referred to runs thus: "Shall not be entitled to any refund of payment unless . . . in which case they shall be entitled to the surrender value of their contributions." There is no machinery provided by the rules for arriving at the surrender value. If the committee chooses to leave matters as they stand in the rules, and provides no table, I am unable to advise that any member could recover his surrender value. On the other hand, assuming that the committee has the right to fix a table, the committee could fix it at any figure from, say,  $\frac{1}{4}$ d. in the pound upwards. I am informed that there is in existence a table. This could be cancelled at any time.

It would be a most difficult matter to successfully invoke the influence of the Courts in this matter as there is no expressed basis of calculation. The above point is of the highest importance to members, and I cannot understand why it should be handled in such vague and general terms.

27th May, 1897.

JOHN F. M. FRASER,