

After this action was commenced these rules were slightly amended, and were registered as follows:—

“Rule 22, new clause (g): ‘That one-fourth of each member’s contributions paid into the Court’s Sick and Funeral Fund be paid into the Central Sick Fund.’

“‘22. (f.) Those courts who at the end of 1910 have drawn out of the Central Sick Fund more than they have paid in will refund the amount to the said fund.’

“‘22. (g.) One-fourth of each member’s contributions payable into the court’s Sick and Funeral Fund shall be paid into the Central Sick Fund, to meet cases of sickness continuing after twelve months, together with the levy under clause (c).’

“The court or branch has a court fund usually called the ‘Sick and Funeral Fund.’ This is the main fund of the court, and the rules provide for the payments according to the age of the members being paid to this fund. These payments vary for males from 2s. 6d. per month when under nineteen years of age to 4s. 11d. from thirty-nine to forty. Every member has to pay in addition 6d. per quarter to the Central Sick Fund, which is a district fund. The Sick and Funeral Fund has to bear the cost of funeral allowances and sick-charges up to twelve months. After twelve months’ sickness the sick-pay is paid by the district out of the ‘Central Sick Fund.’ Up to the passing of these new rules this ‘Central Sick Fund’ was kept up by the payment of 6d. per quarter already referred to, and by 3d. per quarter by the court paid by it out of its Sick and Funeral Fund, in all a sum of 3s. per member per year. I am dealing only with male members. A different charge is made for female members. Then comes clause (g), which enacts that in addition to the 3s. a year, a court must pay one-fourth of each member’s contributions to the court’s Sick and Funeral Fund to the Central (or District) Sick Fund.

“The plaintiffs complain that, the district not having raised the contributions of members to the Sick and Funeral Fund of a court, it will be impossible for a court to pay the sickness-charge hitherto paid and by the rules payable to its members if, in addition to the levy or contribution of 3s. per year, one fourth of its Sick and Funeral Fund is taken from it for the Central Sick Fund.

“What is termed the funeral benefit is really a life-insurance benefit. On the death of a male member his relatives are entitled to £30. This funeral benefit is due to be paid by the court, but the court practically reinsures in the district, and for the payment of a certain sum out of the Sick and Funeral Fund the district undertakes this liability. What, then, has happened in the past is that a court out of the Sick and Funeral Fund has paid to the district a sum for reinsurance of funeral benefits, and has also paid out of its Sick and Funeral Fund a contribution to the Central (or District) Sick Fund, the district paying for sickness which continues after twelve months.

“The question raised by the plaintiffs as to the new rule (g)—I prefer to take that rule first—is, Can a district transfer from a Sick and Funeral Fund a share of that fund to the Central Sick Fund? The plaintiffs contend that such an action is a violation of the provisions of the Friendly Societies Act, 1909, section 40. Subsections (1) and (2) of that section are as follows:—

“(1.) In all registered friendly societies and registered branches thereof all moneys received or paid on account of each particular fund for which a separate table of contributions has been adopted shall be kept separate and distinct, and shall be entered in a separate account distinct from the moneys received and paid on account of any other fund; and a separate fund or funds shall be established for the payment of all expenses of management, and of all expenses (if any) on account of medical or surgical attendances, including medicine and medical and surgical requisites.

“(2.) Save as in this Act expressly provided, no transfer shall be made of the moneys of any one benefit fund to meet the liabilities of any other fund, nor shall such moneys, or any interest accruing therefrom, be in any manner applied for the use, whether temporary or permanent, of any fund save the fund to which they properly belong.’

“It is urged that what is being done is to take Sick and Funeral Funds to be used for Sick Funds only.

“To this the defendants make two answers: (1) They say that it is not taking funds from one fund and placing them to a fund for a different purpose; (2) they raise the point that this Court has no jurisdiction to deal with the internal affairs of a society unless there is some express law violated.

“I am of opinion that, so far as this rule is concerned, the Court cannot inquire as to what its effect may be in making a court what is called unfinancial or insolvent; and I am also of opinion that this is not a violation of section 40 (2). All the sick and funeral benefits have to come out of the Sick and Funeral Fund. I see no violation of that subsection in the court taking a sum out of that fund to reinsure funeral benefits, and I understand that this has been done for years. The Sick and Funeral Fund is still to be used for sick and funeral benefits. All, in fact, that Rule 22 (g) does is to take from the fund more for the Central Sick Fund than has hitherto been demanded. It is not transferring a Sick Fund to another purpose: the fund is to be used for sickness. It is not a case where there has been such a taking as to leave nothing for funeral purposes: they are provided for. If it should happen that the usual contributions to the Sick and Funeral Fund of a court are not sufficient to pay for sickness up to twelve months, then it seems to me under Rule 49 (a) contributions may be increased, for that rule states that a male member shall contribute, &c., ‘not less than provided in the following scale.’ Rule 49 (b) makes provision as to the contributions of female members. I am of opinion, therefore, that as to Rule 22 (g) the claim of the plaintiffs has not been substantiated.

“The question as to whether Rule 22 (f) is *ultra vires* is one of considerable difficulty. The first inquiry must be, What power has a district to make rules?