

ALPATI TATAIYA AND OTHERS

A

v.

THE FIJI KISAN SANGH AND OTHERS

[COURT OF APPEAL, 1964 (Hammett P., Adams J.A., Marsack J.A.),  
6th, 21st February]

B

Civil Jurisdiction

*Industrial association—constitution—no sufficient provision for accounts as required by Industrial Associations Ordinance s.8(g)—requirements of section not incorporated into constitution by implication—members bound by terms of constitution—Industrial Associations Ordinance (Cap. 94) ss.6, 7(1), 8(g), 11, 11(1), 11(3), 19, 20—Companies Act 1948 (Imperial) (11 & 12 Geo. 6, c.38) s.13(2)—Industrial Associations Regulations (Cap. 94).*

C

*Trusts and trustees—industrial association—general assets not held as trustee for members.*

*Accounts—incorporated industrial association—members entitlement to accounts governed by constitution.*

D

Appeal from the dismissal by the Supreme Court of an action in which members of the Fiji Kisan Sangh, an industrial association or union registered under the Industrial Associations Ordinance, claimed from the Union and two officers thereof, an account of receipts and expenditure in relation to a building fund to which members of the Union had contributed.

E

*Held:* 1. The constitution of the Fiji Kisan Sangh fails to comply with section 8(g) of the Industrial Associations Ordinance in that it makes no express provision for the keeping of books of account by the Central Board of the organisation, or for the auditing of accounts, or for making available to the Registrar or to members, of copies of audited accounts or of the auditors' reports thereon.

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2. No certificate of registration of the Union was produced to the court, but even if one had been produced section 19 of the Ordinance is directed to establishing the validity of the registration and incorporation of a union, and does not have the effect of proving conclusively, contrary to the facts, that the provisions required by section 8(g) are present in the constitution.

G

3. Section 20 of the Ordinance (which provides that any defect in or omission from the constitution of any industrial association shall not invalidate the constitution or registration of the association) has the effect that the Registrar's acceptance of the constitution is final as to its validity in the form in which it stands, in so far as invalidity might be suggested on the ground of any mere omission to comply with any requirement of the Ordinance.

H

A 4. Having regard to the foregoing considerations the court found no provision, either in the Ordinance or the constitution of the Union, binding the Union, expressly or by implication, to furnish members with detailed accounts.

B 5. The relationship between the Union and its members was analagous to that between an ordinary incorporated company and its members. The purpose of the building fund, which was the subject of the action, was to provide a building which would belong, not to the contributing members, but to the Union itself, and there was no ground for holding that any of the respondents was a trustee in respect of the fund.

C 6. There is no warrant for the view that a body corporate is bound in law, upon demand by a member, to furnish him with a detailed account of its receipts and expenditure.

C 7. The matters brought in issue in the action were concerned solely with the internal management of the Union and the rule in *Foss v. Harbottle* (post) applied.

D *Per curiam*: Though section 8(g) of the Ordinance was not complied with, an implication of a duty to keep proper books of account rests upon all persons in responsible positions who are called upon to administer the property and funds of such an organization as the Fiji Kisan Sangh.

E Cases referred to: *Jubilee Cotton Mills Ltd. v. Lewis* [1924] A.C. 958; *Salomon v. Salomon and Co.* [1897] A.C. 22; *Foss v. Harbottle* (1843) 2 Hare 461; 67 E.R. 189; *Burland v. Earle* [1902] A.C. 83; *Cotter v. National Union of Seamen* [1929] 2 Ch. 58; *Chalmers v. the Fiji Kisan Sangh* (P.C. 1964—unreported).

Appeal from a judgment of the Supreme Court.

K. C. Ramrakha for the appellants.

F J. N. Falvey for the respondents.

Judgment of the Court: [21st February, 1964]—

G The firstnamed defendant, the Fiji Kisan Sangh, is an industrial association or union duly registered under the Industrial Associations Ordinance (Cap. 94). One defendant, who was President of the Union when the writ was issued, has since died, and an order was made eliminating him from the proceedings. The other two defendants are respectively the Secretary and the Treasurer of the Union.

Though their status as members was originally in dispute, it was conceded at the close of the case before the learned trial Judge that the plaintiffs (now the appellants) are members of the Union.

H Paragraph 3 of the amended statement of claim alleged that the Union had collected, in addition to normal subscriptions from members, substantial donations from them and from persons other than

members, either by direct payment or by assignment of moneys payable by the Colonial Sugar Refining Company Limited; and, in particular, that many farmers had, in or about the year 1954 or 1955, assigned certain moneys described as Canadian Gift Bonus moneys; and that the moneys so collected "were to be held in trust by the said Fiji Kisan Sangh for the benefit of its members generally."

In regard to the allegation that moneys had been collected from persons other than members, we gathered from what was said by counsel at the hearing before us that the total sum so collected was so small as to be insignificant for the purposes of this case. But, however that may be, no relief is sought by any non-member, and no argument was founded upon the fact that some donations were made by non-members; and accordingly it is permissible and proper to ignore payments by non-members, and to treat the case as one in which members of the Union are proceeding against it and certain of its officers in respect of moneys provided by members.

There was a great deal more in the amended statement of claim which does not need to be narrated; and the prayer may be sufficiently summarised for present purposes by saying that it asked for a declaration that the defendants had constituted themselves trustees for the plaintiffs in respect of the matters alleged, and for orders requiring the defendants to supply to the plaintiffs full and detailed accounts of the moneys received and of the expenditure thereof.

The learned Judge held that the plaintiffs had failed to establish, as between themselves and any of the defendants, a legal relationship of trustee and beneficiary in respect of any of the property or moneys in question, and that no order for accounts could be made unless it were established that one or other of the defendants was "an accounting party," bound, after demand, to render an account to these particular plaintiffs. This, he held, the plaintiffs had quite failed to do. The appeal is from this decision.

Ground 3 of the notice of appeal dealt with the learned Judge's award of costs, and was abandoned at the hearing of the appeal, though, of course, the order as to costs in the court below would be open to review if the appeal were allowed. The other two grounds of appeal reads as follows:

1. That the learned trial Judge erred in not holding in law and in fact that the Respondents, or any of them have constituted themselves Trustees either in respect of the Kisan Sangh Building Fund Account and further erred in not making the necessary Order for Accounts and enquiries against the said Respondents or any of them as Trustees.
2. The learned trial Judge erred in law and in fact in not holding that there was a statutory duty upon the Respondents or any of them to give full and proper accounts to the appellants."

This notice of appeal makes no reference to a claim originally made for a full list of the Union's members for the years 1950 to 1960 inclusive. This claim was rejected by the learned Judge, and Mr. Ramrakha, as counsel for plaintiffs, made it clear that it is no

longer pursued. Ground 1 is obviously defective, but it is unnecessary to seek the missing alternatives, since, in answer to questions from the Bench, Mr. Ramrakha told the Court that it is only with the Kisan Sangh Building Fund that the plaintiffs are now concerned, this being the fund constituted by the moneys collected as narrated above. The purpose for which they were collected was to provide a building, and the building was in due course erected. In a balance sheet prepared as at 31st December, 1958, the land and building appear as an asset valued at £37,147, though against this must be set a Government loan of £10,000 and a debt to Fiji Builders Limited of £4,603, which appear among the then existing liabilities.

The balance sheet mentioned above was prepared by one of the plaintiffs, Shafulla, who was general treasurer of the Union from August 1958 to February 1959, and who has given evidence to the effect that the account books prior to his appointment never came into his hands; and, in the argument before us, Mr. Falvey informed the Court that the Union does not possess the records of its accounts prior to 1958. We should perhaps mention, in this connection, that, included in the record of the present case, is the record up to a certain stage of an action by the Union against one Nathaniel Stuart Chalmers, which was commenced in April, 1959, and in which the Union sought relief against Chalmers in respect of cheques drawn by him as an officer of the Union against the building fund. After two hearings in the Supreme Court, and two in this Court, this action has been the subject of a decision of the Privy Council within the last few weeks, and is apparently headed for a further trial in the Supreme Court. We have nothing to say about it at the moment, except that it indicates that the Union itself is concerned in an endeavour to elucidate the disposal of a substantial part of the moneys which went into the building fund.

Mr. Ramrakha informed the Court that the plaintiffs do not at present allege any malpractice on the part of the Union or any of its officers or members, and that the claim is in the meantime a mere claim for accounts, though it would be otherwise, if, when given, the accounts were found to show irregularities. He argued that the liability of the defendants to account to the plaintiffs might be based either on proof that they had constituted themselves trustees for the plaintiffs, or on the ground that there is a statutory duty resting upon them to furnish accounts to the plaintiffs. We shall deal first with the latter argument.

In specifying the matters which must be provided for in the constitution of an industrial association, section 8 of the Industrial Associations Ordinance (Cap. 94) proceeds in part as follows:

"8. The constitution of every industrial association shall provide for the following matters —

(g) the keeping of books of account and the periodical auditing of accounts at least once every calendar year, and the making available to the Registrar and members of true copies of the audited accounts and of the auditor's reports thereon."

But, before considering whether section 8(g) has been complied with, it will be convenient to examine so much of the Union's constitution as is likely to be relevant for the purpose of this judgment.

The Union is, by its constitution, organised in Branches, each of which has its own Branch Executive Committee, including a chairman, a secretary and a treasurer (or secretary-treasurer). Branches are required to hold annual meetings, at which a member or members are to be elected to represent the Branch on the Central Board, the number to be so appointed being based on the number of members in the Branch. Clause 16 of the constitution requires each Branch Secretary to "keep proper books of account as may be authorised by the Central Board," and the Branch books are to be open, at all reasonable times, to inspection by any Branch member. This is the only provision in the constitution conferring on members any right to inspect books or records, and, as indicated, it is limited to Branch books of account.

Clause 14 requires the Chairman of a Branch to give at its annual meeting, "a report on the activities of the Branch," but there is no provision for any submission of accounts at such meetings.

Clause 17 vests "the management and control of the Union's affairs" in a "Central Board," consisting of a president, two vice-presidents, a treasurer, and the members elected by the Branches as aforesaid. It provides *inter alia* that:

"The Central Board shall exercise all the powers of the Union which are not by these Rules or by Law required to be exercised by the Union in general meeting and without prejudice to the generality of the foregoing powers it shall have power to appoint the general secretary, treasurer, auditor or auditors, . . ."

Clause 18 provides for an annual general meeting of the Union, and concludes as follows:

"The Treasurer shall submit a report and revenue account and balance sheet."

Clause 23 requires Branch secretaries to transmit to the treasurer such subscriptions and dues as are collected by the Branch; and Clause 24 provides (*inter alia*) that "All moneys received by the Union shall be banked by the officer or officers appointed by the Central Board," the banking account to be operated upon on the authority and signature of such officials and officers as are appointed by the Central Board. It concludes with the following sentence:

"By resolution of the Central Board any funds of the Union may be employed in connection with any one or more of the objects of the Union and the Board shall also have power to make a levy on members for that purpose if circumstances should so require."

A yearly subscription not exceeding 10/-, and payable to the Branch secretary, is provided for in Clause 4, which also requires the payment by members of "such other amount as may be determined by the Union by way of levies."

A Clause 29 provides for the winding up of Branches, and, since it requires the Branch secretary "to hand over the books and moneys and other surplus assets to the General Secretary," it appears to contemplate that Branches may possess some separate assets of their own.

Clauses 32 and 33 read as follows:

B "32. *BENEFITS TO MEMBERS:*

No member as such shall be entitled to any distribution of assets of funds of the Union and all moneys received by the Union shall be used in connection with the objects or the furtherance of the objects of the Union.

C 33. *EFFECT OF RULES ON MEMBERS:*

D Every person who becomes a member of the Union shall be bound by the Rules and decisions of the Union and the Central Board acting within the scope of the objects and powers of the Union and Board respectively, and the Rules for the time being of the Union shall be deemed to be a contract entered into by the member so joining the Union with the Union and the other members thereof."

E We believe that the forgoing summary includes everything contained in the constitution which may be relevant in considering whether section 8(g) of the Ordinance has been complied with. As to the requirement that the constitution shall provide for the keeping of books of account, this is done in Clause 16 with reference to Branch books. But there is no other express provision requiring the keeping of books of account, and it would seem that, in respect of the Central Board, any duty to keep books of account must rest on implications to be drawn from the provisions of Clause 17 requiring the appointment of a treasurer and empowering the Board to appoint an auditor or auditors, and on the provision contained in Clause 18 requiring the treasurer to submit to the annual meeting a report, revenue account and balance sheet. As to the requirement that annual auditing shall be provided for, there is no express provision for auditing of accounts, and the only reference to auditing is the one quoted above from Clause 17. There is no provision anywhere for the making available to the Registrar or to members of copies of any audited accounts or of the auditor's reports thereon. It seems clear therefore that the constitution does not comply with section 8(g). Even if, on the supposition that implication may suffice, there is an implication of a duty resting on the treasurer to keep proper books of account and to have them audited annually, there is neither express nor implied provision for making copies of his audited accounts or the auditor's reports available to the Registrar or to members.

H No certificate of registration of the Union is before the Court, but the fact of registration is alleged in the amended statement of claim, and admitted in the statement of defence. Section 6 of the Ordinance provides that:

“Every association shall upon registration under this Ordinance become a body corporate . . .”

It would seem therefore that incorporation depends upon the act of registration—whatever may be meant by “registration”—and not upon the signing of a certificate of registration. One may contrast section 6, in so far as it makes incorporation depend on “registration”, with section 18(2)\* of the Companies Act 1948 (Imp.), under which the creative act from which incorporation flows is the signing of the certificate of incorporation (see *Jubilee Cotton Mills v. Lewis* [1924] A.C. 958, 972-4). It seems, therefore, that the existence of a certificate in the present case cannot safely be inferred from the pleaded admission of registration. In any event none has been “produced.” By virtue of section 19 of the Ordinance, a certificate of registration is, on its mere production, conclusive proof—

“(ii) that all the provisions of this Ordinance in respect of matters precedent and incidental to the registration of an industrial association . . . have been complied with.”

Even, however, if there were before us as certificate of incorporation, we are unable to say that its production would prove conclusively the presence in the constitution of this Union of provisions required by section 8(g), which ought to have been in its constitution, but are in fact not there. In our opinion, the conclusive operation of section 19 is directed to establishing the validity of the registration and of the consequent incorporation. If a certificate is produced, such validity may not be attacked in respect of matters precedent or incidental to registration; but the purpose of the provision is to render the validity of the registration unquestionable, and not to prove, for some other purpose and contrary to the facts, that something which ought to have been done has in fact been done. Here, section 8(g) has not in fact been complied with; and the result is, not that the omitted matters are to be read into the constitution in some form invented by the Court, but simply that the Union has been registered—and validly so—without having the required provisions in its constitution.

For these reasons we are unable to accept Mr. Ramrakha’s contention that the omitted provisions must be read into, or treated as implied in the constitution. As to the rather different argument that, by reason of Clause 33 (quoted above) the constitution is a contract between the members, and that it is not possible to contract out of a statutory provision which is for the public benefit, it seems to us that this is not a case of contracting out, but merely of omission to contract as required; and, in this connection, section 20 of the Ordinance appears to be relevant. It reads as follows:

“20. Notwithstanding anything contained in this Ordinance or in any other law any defect in or omission from the constitution of any industrial association shall not invalidate the constitution or the registration of any industrial association.”

\* The reference intended is probably to section 13(2)—Ed.

A It will be observed that this provision validates, not only the registration, but also the constitution itself; and that it does not provide that any defect or omission is to be made good by implication. In our opinion, the section has the effect that the Registrar's acceptance of the constitution is final as to its validity in the form in which it stands, in so far as invalidity might be suggested on the ground of any mere omission to comply with any requirement of the Ordinance. We limit this statement to omissions of matters B required by the Ordinance, and it is unnecessary for us to express any opinion as to what the situation would be if the constitution were found to infringe, otherwise than by mere omission, any express provision of the Ordinance or of any other law. Presumably, anything prohibited by the Ordinance or by any other law would be invalid notwithstanding the general validation of the constitution. C But, with regard to simple omissions, the constitution is to be valid notwithstanding such omissions.

D While we are not prepared to read implications into the constitution by the mere force of section 8(g), we have already suggested some possible, and perhaps relevant, implications, and would add that, in regard to the keeping of books of account, we think that an implication of a duty to keep proper books of account may be made on the simple ground that, quite apart from section 8 (g), E such a duty rests upon all persons in responsible positions who are called upon to administer the property and funds of such an organisation as the Fiji Kisan Sangh.

F As to auditing of accounts, there is nothing in the constitution except the power to appoint an auditor or auditors contained in clause 17, and we are unable to say that the existence of this power impliedly requires the Central Board to exercise it. If it is exercised in fact, then presumably the accounts to be submitted by the treasurer to the annual meeting in pursuance of clause 18, must be audited accounts. We think it impossible to go further on this point by way of implication, and all that can be said is that, while provision for annual auditing ought to have been contained in the constitution, and the Registrar ought not to have accepted the constitution without it, the omission cannot in our opinion be supplied by implication.

Section 11 of the Ordinance contains the following enactment:

G "11 (1) A general statement of the receipts, funds, effects and expenditure of every industrial association shall be transmitted by the secretary of the association to the Registrar on or before the thirty-first day of March in every year in respect of the preceding year and shall show—

(a) fully, the assets and liabilities at the thirty-first day of December of the preceding year and the receipts and expenditure during the preceding years;

(b) separately, the expenditure for the preceding year in respect of the several objects of the association;"

H The form of this "annual return" is provided for in the Industrial Associations Regulations (Cap. 94), but neither the regulations nor the forms make any provision for auditing.

Section 11 of the Ordinance goes on to provide, in subsection (3), that every member—

“... shall be entitled to receive, on application to the secretary of the association, a copy of such annual general statement, without making any payment for the same.”

The “annual general statement” which a member is entitled to get under that provision is, of course, something very far removed from the detailed accounts which the plaintiffs are seeking in this action.

The net result of the foregoing discussion is that we find, neither in the Ordinance nor in the constitution, any provision binding the Union, expressly or by implication, to furnish members with detailed accounts. Members have the right just mentioned under section 11 (3), and the treasurer is bound to submit his report, revenue account and balance sheet at each annual meeting; and Branch books are, as stated above, open at all reasonable times to inspection by Branch members. These seem to be the only means provided by which members can, as of right, inform themselves as to the financial affairs of the Union. There is no evidence of non-compliance either with these express provisions of the constitution or with section 11; and there is no evidence of any circulation among members of annual or other accounts in any form, either audited or unaudited.

In our opinion, and for the reasons already given, Mr. Ramrakha has failed to establish that there is any duty imposed by statute or by the constitution requiring the Union to render detailed accounts to its members, and the case cannot be regarded as one in which members are endeavouring to enforce any expressly imposed duty to furnish them with accounts. The question remains whether any such duty exists as a matter of general law.

As stated above, it is now only the Building Fund with which the plaintiffs are concerned; and in answer to a question from the Bench, Mr. Ramrakha agreed that the desired investigation of this fund would not lead to any claim by members for money or property, but, if it led to any result at all, could only lead to the establishment of a right in the Union itself to recover money or property. In other words, this is not a case in which members of an incorporated body are endeavouring to enforce any proprietary or pecuniary right of their own, but is, on the contrary, one relating solely to the enforcement of possible proprietary or pecuniary rights vested in the body corporate.

In this connection, it is desirable to quote section 7 (1) of the Ordinance, which reads as follows:

“7. (1) Upon registration of an association under this Ordinance, all rights and liabilities of the members thereof in their capacity as such shall desolve upon the association.”

The relation between this Union and its members is thus clearly analagous to that which exists between an ordinary incorporated company and the members thereof; and the law is perfectly clear that such a company is an entity separate from its members, and

A that the members, as individuals, or even as a body, have no direct right, title or interest in or to the assets of the company. That the relationship between a company and its members in respect of the assets of the company is not that of a trustee holding the assets for the beneficiaries may be regarded as having been finally settled in the famous leading case of *Salomon v. Salomon and Co.* [1897] A.C. 22 — see in particular *per* Lord Herschell at pp. 42-44, and *per* Lord Davey at p. 56. It may no doubt be conceded that, in appropriate circumstances, a company may constitute itself a trustee of moneys or other property for some member or members, and that such a trust may be either express or constructive. It may even be true that a company may constitute itself a trustee for all its members. But it certainly does not hold its general assets as a trustee for the members. In this respect we can see no ground for distinguishing the case of a Union incorporated under the Industrial Associations Ordinance from that of a company incorporated under a relevant statute for the purpose of carrying on a trade or business.

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F In regard to membership subscriptions or levies payable by members to this Union, we have no doubt that the moneys arising therefrom, when they reach the hands of the Union, are merely part and parcel of its general assets, applicable for the purposes and in the manner provided in the constitution, and that the members have no individual interests in such moneys, and no rights in respect of them except such as are provided for in the constitution, or by the general law. We think this applies even to moneys which may not have been contributed in equal proportions by all the members, provided only that the intention was that they should become part and parcel of the general funds of the Union; and we think also that it applies, where such intention is present, even in the case of moneys which cannot be regarded as levies but only as voluntary contributions. If moneys are in fact provided voluntarily by members for some specific purpose—as, for instance, for the erection of a building—it may well be that any member or members would be entitled, in appropriate proceedings, to restrain the Union from devoting such funds to other purposes. But this is a very different matter from compelling the incorporated body to furnish members with detailed accounts, and it is a claim of the latter kind that we are concerned with here.

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H On the material before the Court, there may be some ground for saying that the moneys comprised in the Building Fund were devoted to a particular purpose, and could be used legitimately only for that purpose. But the purpose of the Fund was to provide a building which would be the property of the Union, and, subject to any obligation there may have been to expend it for that purpose only, the Fund was the property of the Union. The provision of the building being within the powers of the Union, it was entitled to devote to it, not only the Building Fund, but also any other moneys it might have available; and it is not improbable—though we appear to have no evidence on the point—that moneys were in fact so applied which did not arise from contributions specifically made for the particular purpose. But, however that might be, the ultimate destination of the Building Fund was for expenditure on the building, or, in other words, on the provision of an asset which would belong, not to the

members who had contributed the funds, but to the Union itself, and in respect of which the members would have no rights except such as their membership might confer on them. We see no ground for holding that any of the defendants was a trustee in respect of the Building Fund. A

It seems therefore, that the plaintiffs can succeed only on the footing that a body corporate is bound in law, upon demand by any member, to furnish him with detailed accounts of its receipts and expenditure; and in our opinion, there is no warrant in law for any such view. If it were so in the case of this Union, it must be equally so in the case of an ordinary commercial company; and it is impossible to suggest that a shareholder in such a company is entitled to demand from the company detailed statements of receipts and expenditure, let alone to insist on having accounts of such receipts and expenditure taken by the court. A member must be content with such rights in regard to the accounts as are conferred on him by the constitution of the company or by statute, and we think the same is true in respect of this Union. B C

We think it appropriate also to point out that such matters as have been brought in issue here are concerned solely with the internal management of the Union. We do not propose to expound the well-known rule in *Foss v. Harbottle* (1843) 2 Hare 461, but, for present purposes, its general effect may be summarised by saying, that, where a company is acting *intra vires* and nothing is being done by way of fraud upon a minority, the Court declines to interfere at the instance of a shareholder, leaving such matters to be dealt with by means of the internal machinery of the company. As was said by Lord Davey in *Burland v. Earle* [1902] A.C. 83, 93: D

“It is an elementary principle of the law relating to joint stock companies that the Court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so.” E

In *Cotter v. National Union of Seamen* [1929] 2 Ch. 58 the Court of Appeal held that the rule in *Foss v. Harbottle* (above) was applicable to a registered trade union, and we see no reason to doubt its applicability to the Fiji Kisan Sangh. The proper remedy of the plaintiffs in respect of the matters of which they now complain lies in the exercise of their voting rights as members in such a way as to ensure that their wishes, if sufficiently supported by other members, are given effect to by the officers of the Union, and that, if necessary, officers may be elected who will comply with the wishes of the majority. There is no suggestion here that anything has been done *ultra vires*, or that there has been anything in the nature of a fraud on a minority; and in such circumstances the only remedy for any wrong done to the Union is by action on the part of the Union itself; and, if there be any difficulty in having such an action instituted, the matter is one of internal management and must be dealt with accordingly. F G

These are the reasons which lead us to conclude that the applicants have no right to the relief they claim against the Union; and this conclusion applies *a fortiori* to the two defendants who are officers of H

A the Union. They are clearly under no personal obligation to render accounts to individual members, and—subject to possible exceptions not relevant here—any obligations resting on them are enforceable only at the suit of the Union.

B Since this judgment was prepared, we have had the opportunity of persuing the judgment of the Privy Council in the case mentioned above (*Chalmers v. The Fiji Kisan Sangh*, 22nd January, 1964). It appears now to be finally determined—for the purposes of, and on the evidence given in, that action—that the Kisan Sangh Building Fund was the property of the Union, and that, in his administration of the Fund, Chalmers was accountable to the Union, and not to the persons who contributed to the Fund. This accords with our own view, based on the evidence in the present action, that it is the Union alone, and not members or contributors to the Fund, that is entitled to call for accounts of the receipts and expenditure of the Fund.

C Whether it is wise policy on the part of the Union to refrain from giving such particulars as it can with respect to the Building Fund is a matter with which we are not concerned, but which may perhaps call for careful consideration by the officers of the Union.

D For these reasons we hold that the learned Judge was right in dismissing the action, and the appeal must accordingly be dismissed with costs to be paid by the appellants to the respondents.

*Appeal dismissed.*