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IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Civil Action No. 691 of 1985

Between:

DEO DATT SHARMA
s/o Brahmadin — Plaintiff

- and -

FIJI MEDICAL ASSOCIATION — Defendant

For the Plaintiff: In Person
For the Defendant: Mr. F.G. Keil

JUDGMENT

Cases referred to:

(1) Suttons Hospital Case (1612) 10 Co.Rep.30b
(2) Riche v. Ashbury Railway Carriage Co. (1874) L.R. 9 Exch. 224; (1875) L.R. 7 H.L.653 sub.nom. Ashbury Railway Carriage & Iron Co. v. Riche
(3) Institution of Mechanical Engineers v. Cane (1960) 3 All E.R.715; (1961) A.C.696.
(4) Eastern Counties Railway Company v. Hawkes (1855) 5 H.L.C. 331; 10 E.R.928.

This is an originating summons in which the plaintiff, a member of the defendant Association, seeks declarations and an injunction.

The Association was established under section 41 of the Medical & Dental Practitioners Act Cap. 255 which reads as follows:

> "41.-(1) There is hereby established an association under the name of the Fiji Medical Association, with perpetual succession and a common seal.
>
> (2) The Fiji Medical Association shall have power to hold real and personal property and may sue and be sued in matters whether relating to contract or tort or otherwise in

connection with the exercise of its powers or the carrying out of its functions under this Act.

(3) Membership of the Fiji Medical Association shall be open to every person who is registered as a medical practitioner in Part II of the medical register.

(4) The Fiji Medical Association may make rules for the election of officers of the Association, the summoning of meetings of the Association, the regulation and conduct of meetings and the proceedings thereat and for all such matters as may be deemed necessary and proper to ensure the efficient functioning of the Association:

Provided that until such rules are made, the rules of the association hitherto known as the Fiji Medical Association in force immediately prior to the commencement of this Act shall be the rules of the Fiji Medical Association established by this Act."

The objects of the Association are then set out in section 42 of the Act, thirteen specific objects with a standard fourteenth object, namely,

"to do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them."

Section 43 of the Act provided for the vesting of all property assets and liabilities of the existing Fiji Medical Association in the statutory Association and for the dissolution of the existing Association upon completion of the formalities connected with the transfer of all such property and assets to the statutory Association.

In 1972 Rules were apparently made under section 4(4) of the Act entitled "Fiji Medical Association Constitution (1972)". The format of the Rules is that of an association formed by the members thereof. Rule 14 prescribed that only an Annual General Meeting or Extraordinary General Meeting has the power "to

rescind, alter or add to any of these rules." Rule 18 provided that the quorum for such meetings was twenty per centum of the voting members, or twenty voting members of the Association, whichever is the less. The membership of the Association is close on 200 so that the quorum for a meeting was 20 voting members. A 'voting' member under Rule 9, is one who is not "more than Twelve months in arrears of subscriptions". A 'voting' member is however described by the members as a 'financial' member, which term I propose to adopt.

An Extraordinary General Meeting was convened in accordance with the Rules for the purpose of introducing a new body of Rules for the Association. That meeting was held on 1st June, 1985 at Hoodless House, Suva. The new Rules were adopted by the latter meeting. In consequence the plaintiff makes application for the following:

"(a) A Declaration that the Extra ordinary General Meeting of the Fiji Medical Association held on 1st day of June, 1985 at Suva did not have the required quorum and therefore unconstitutional and null and void.

(b) A Declaration that the new constitution of the Fiji Medical Association purportedly adopted at the aforesaid Meeting of 1st June, 1985 was therefore null and void.

(c) A PROHIBITORY INTERIM INJUNCTION/INJUNCTION: restraining the Fiji MEDICAL ASSOCIATION not to hold the election of the office bearers for year 1985-1986 according to the new Constitution purportedly adopted at the Extraordinary General Meeting on 1st day of June, 1985.

(d) Award of cost of this action to the Plaintiff."

It is not contested that 23 medical practitioners attended the meeting on 1st June, 1985. The defendant Association claims that 22 of those were financial members of the Association. The plaintiff

however claims that at least three of the latter 22 members were not financial members and that therefore a quorum was never present from the start. In this respect the Treasurer of the Association Dr. Sachida Nand Mudaliar testified that he had prepared a list of financial members as at 31st May, 1985, but that the list was incomplete, due to incomplete records, which have now been brought up to date. The said list does not contain the names of the three members whom the plaintiff alleges were not financial members: indeed the list prepared by the Treasurer forms the basis of the plaintiff's allegation.

The Treasurer gave evidence. I must confess that I found it somewhat confusing, but I believe that confusion may have arisen from the fact that some past records were not properly maintained or were non existent.

The Treasurer was cross-examined on another list, that is, a list of all the members showing their financial standing as at June 1984, prepared for the Annual General Meeting in September, 1984: subscriptions were payable under Rule 8 "by September each year". The list indicates that one of the three members cited by the plaintiff was not in arrears in June 1984. The latter member had in fact paid his annual subscription before 1st June, 1985 and made complaint to the Treasurer at the meeting on that date; the Treasurer, after checking the cash book added the member's name to the list of financial members i.e. as at 31st May, 1985, circulated to members.

As to the other two members cited, the Treasurer testified that he discovered from checking the list of subscriptions collected at the Annual General Meeting in September 1984, that the said two members had then effected payment of $48, which would mean of course that they were not "more than twelve months in arrears of subscriptions" on 1st June, 1985: indeed on the latter date one of the said two members effected payment for 1985. The latter member had been in arrears

of $72, according to the list prepared in June 1984, i.e. $24 and $48 in respect of 1983 and 1984 respectively. This was also the case in respect of a fourth member who had also paid $48 at the Annual General Meeting in September 1984. When queried as to why payment of the outstanding $24 had not been effected by either member, the Treasurer testified that both members had contested the latter sum, claiming that they had previously effected payment thereof. It appears that the records previously maintained were in an unsatisfactory condition. The previous Treasurer was consulted in the matter, and thereafter the present Treasurer decided to take the word of the two members in the matter.

I do not see that the latter decision can be queried. Such matters must be left to the discretion of an office bearer in a voluntary association acting in good faith. The necessity for such decisions only arise however where proper records are not maintained. While the Treasurer took over duties in September 1984, and while he may have inherited some difficulties, nonetheless the failure to update a list of financial members, circulated to members on 10th June, 1985, in preparation for the forthcoming Annual General Meeting, has led to much difficulty in this case. I appreciate that all office bearers in the Association are engaged in onerous duties of national importance: I would expect that they are dedicated to such duties and have little time to spare for the thankless tasks associated with office bearing in a voluntary association. Nonetheless, I express the hope that the Association's financial records will have been perfected by the forthcoming Annual General Meeting. Meanwhile, suffice it to say that I accept that 22 members initially present at the Meeting on 1st June, 1985 were financial members.

The plaintiff claims that whereas 22 members were present at the start of the meeting, delayed

45 minutes due to a lack of quorum, as little as 17 members remained after an adjournment for a "tea-break" from about 5p.m. to 5.30p.m., yet the meeting nonetheless continued. He called oral evidence on the point.

Dr. Santokh Singh testified that he was present throughout the meeting. He had not counted those present. After the tea-break the Secretary had announced that there were only 17 members present. When cross-examined on the point he said that some members, as medical practitioners, were "on call" and, he presumed, "they could have left". He recalled that some had left and did not come back. When pressed he stated that it was possible that some members had come back. He was adamant that no one had said " we now have a quorum and let's carry on". He was also certain that some members' did not come back.

There was specific evidence on the latter point. Dr. Karam Singh testified that the Association Secretary had counted the members present when the meeting opened and declared a quorum. He had not counted those present. He had left the meeting during the tea-break informing the President of his departure.

Dr. Vijay Prakash Kapadia testified that he has gone to Hoodless House, part of the Fiji School of Medicine complex, on 1st June, 1985, in order to attend to a sick medical student. He came across the meeting by chance: he may have been sent notification of the meeting but he had not been aware of it before that. He stayed at the meeting for no more than two minutes, sometime after 5p.m.

Dr. Vir Indra Singh testified that he had personally counted 22 members present when the meeting commenced. After the tea-break he observed that fewer members were present, though he did not count them. "A few people I knew were not there then", he said,

"Dr. Kapadia, Dr. Rathod were not then present."

On the other hand, the Treasurer testified that two additional members not shown on the list of those present, prepared by the Secretary, namely, Dr. Selva Nathan Mudaliar and Dr. Daya Singh, "showed up during the meeting and then left as they were on call". He himself had also left the meeting briefly for about ten minutes to attend to a patient in the Casualty Department and had returned thereto.

The Secretary of the Association Dr. Vinod Kumar Singh testified that 23 members were present at the meeting, including one medical practitioner (referred to in the list prepared by the Secretary, and exhibited to his affidavit, as an "Associate Member") who, the Secretary claims, in his affidavit, is a member by virtue of the provisions of section 10 of the Act, but was not a financial member at the time. After the tea-break the Secretary counted 19 members present, when he informed the President thereof. Someone returned to the meeting at that stage - he thought it was Dr. C. Rathod - when he counted 20 members in attendance. The meeting thereafter continued. Under cross-examination he said he counted later again and found 22 members present.

The President of the Association Dr. Balram Iyer testified that 22 or 23 members were present at the meeting. He corroborated the Secretary's evidence, that is, as to the latter informing him that only 19 members were present after the tea-break. He then declared that the meeting could not continue. After a few minutes he saw "at least one member returning and I continued", that is, after he had then counted 20 members present. He testified that it was not true that Dr. Rathod had left the meeting: "I can clearly visualise him sitting there". he said. Indeed he recalled that when the meeting was over, the Treasurer, Dr. Rathod, himself and at least one other doctor stayed behind to partake of more tea and sandwiches. He also recalled that at

least two other members, Dr. Daya Singh and another, were also at the meeting. He was not sure if the latter member was Dr. Selva Nathan Mudaliar.

The evidence of Dr. Karam Singh and Dr. Vijay Kapadia that they left the meeting has not been contested. It is clear therefore that the quorum was reduced to no more than 20 thereby. Dr. Vir Indra Singh takes matters further however and testified that Dr. Rathod also left. When cross-examined in the matter he testified that after the tea-break he had turned around and observed those present. "I didn't look after that" he said. When asked if Dr. Rathod was present "at the end", he replied, "No he was not there". He had not observed whether Dr. Karam Singh was then present, as "we were all in a hurry home", he said. That aspect did not apply to Dr. Rathod, he said, as "he was my immediate neighbour at the meeting up to tea-break. I looked around after the tea-break and I didn't see him".

I observe however that the witness refreshed his memory from the list of those members present, prepared by the Secretary, in recalling the members not present after the tea-break. Further, while he could not recall whether or not Dr. Karam Singh was present at the end of the meeting, as "we were all in a hurry home", yet he could recall the presence of Dr. Kapadia at the meeting, and further that the latter was not present either after the tea-break or at the end of the meeting, although, in Dr. Kapadia's evidence, he had spent but two minutes at the meeting, when no doubt the opportunity to observe him was limited. As against that, there is the evidence of the Secretary, and in particular that of the President who was quite adamant that Dr. Rathod was present at the end of the meeting. On the balance I consider that Dr. Vir Indra Singh may well be mistaken: in the least I am in some doubt in the matter, and of course the onus lies onthe plaintiff.

On the other hand there is the evidence of Dr. Santokh Singh that the Secretary informed the meeting

that only 17 members were present after the tea-break. It may be that Dr. Singh is mistaken in the matter. I observe that he did not then count the members present, as one might expect from a very active member at the meeting. His evidence on the point is not directly corroborated by Dr. Vir Indra Singh. It is contrary to the evidence of the President and the Secretary.

I observe from the minutes of the meeting that Dr. Santokh Singh was easily the most active member at the meeting. His name is recorded some ten times therein, having raised six motions and seconded another four. He specifically testified that the Secretary had pointed out that there was no quorum while they were discussing Rule 31 of the new Rules. The minutes indicate however that the witness thereafter raised two more motions and at the end of the meeting stated that "he wished to express his thanks to the Executive Council for undertaking the task of revising the rules and performing an excellent work".

It is not contested that the Secretary drew attention to the lack of quorum. That established his sense of duty in the matter. I find it difficult to appreciate that thereafter a meeting of such responsible persons as medical practitioners, members of a statutory professional body, could, without objection it seems, continue to conduct a most important Extraordinary General Meeting without a quorum. I say there was no objection, as not one single witness before this court has given evidence thereof. On the contrary, the witness whose evidence is most damaging to the defendant Association, was the most active member at the meeting, not just before but throughout the alleged continuing lack of quorum.

On the other hand, there is the aspect that the list of members prepared by the Secretary specifies attendance by Dr. Kapadia, when he was but two minutes at the meeting. Again, I do not appreciate why if

Dr. Selva Nathan Mudaliar and Dr. Daya Singh were at the meeting, even if briefly, their names were not also contained on the list; but then the Secretary may not have observed such members at the meeting as he gave no evidence thereon. I must observe that the recording of the minutes of the meeting leaves a lot to be desired. It is recorded therein that 22 members were present, without specifying the name of each office bearer and member: I do not appreciate why such names were not included in the minutes, when the names of three members who had tendered apologies for non-attendance were included. It is not clear therefore, whether the figure of 22 includes the 'Associate Member' earlier mentioned, or indeed whether it represents the situation when Dr. Kapadia joined the meeting. Dr. Kapadia's arrival or departure are not recorded in the minutes: neither is Dr. Karam Singh's departure: they should have been recorded. Neither is the adjournment for tea-break or the crucial aspect that the meeting continued at a particular time only after a quorum was reached.

As in the case of the Treasurer however, I appreciate that the Secretary's duties as a medical practitioner in Lautoka must surely leave him with little time for the perfecting of the minutes of a voluntary association based in Suva. I consider that the recording of the minutes could well be improved upon. Nonetheless on the balance I prefer the evidence of the President and the Secretary on the point. Putting the plaintiff's case at its strongest, I find myself in some doubt. The onus lies on the plaintiff in the matter. I find therefore that the Extraordinary General Meeting of 1st June, 1985 did not lack for a quorum.

The plaintiff claims however that there was no motion passed at the meeting to adopt the new Rules. The minutes do not reveal that any such formal motion was made, seconded or passed. Instead the minutes read as follows:

"The President thanked all the members present and reminded everybody to sign the little note attached which said that 'the F.M.A. Constitution 1972 is hereby revoked.'"

Copies of the said "little note" were given to members at the meeting. The note reads as follows:

"The Fiji Medical Association Constitution (1972) is hereby revoked save that any person appointed or elected to any office under that Constitution shall be deemed to have been appointed or elected under these Rules and any funds and accounts established under these Rules shall be deemed to be in continuation of the corresponding funds and accounts established under the revoked Constitution.

Dated the day of 1985."

There is no evidence as to how many if any members signed copies of the said document. It appears that it was intended that the signed documents should be retained by the members: I do not appreciate why this was considered appropriate or necessary. In any event, there is no formal document before me of adoption, by motion or otherwise, of the new Rules.

I appreciate that the minutes before the Court are draft minutes, and must be confirmed at the Annual General Meeting. Nonetheless it was not advanced by any witness that a formal motion in the matter had been passed at the Meeting. The minutes however clearly indicate that the whole purpose of the meeting was to adopt new Rules for the Association and to revoke the existing Rules. The entire minutes deal with amendment to the draft new Rules, with discussion thereon, with particular motions arising therefrom and with the results of voting in respect of each such motion. There are then the two concluding paragraphs of the minutes reproduced above, wherein Dr. Santokh Singh expressed his thanks to

the Executive Council and the President thanked all members and requested them to each sign a document of revocation of the 1972 Rules. There is in particular no record of any dissent in the matter or any motion to the contrary: I can only regard the minutes in their totality therefore as a record of adoption by the meeting of draft new Rules for the Association, that is, as amended by the meeting, and of revocation of the existing Rules: indeed the last of the new Rules, Rule 49, is couched in exactly the same terms as the document circulated to the members at the close of the meeting, reproduced above. I am satisfied therefore that the draft new Rules were properly adopted by the meeting on 1st June, 1985.

It will be seen that the plaintiff, under sub-paragraph (b) of his originating summons, seeks a declaration that the new Rules of the Association "purportedly adopted at the aforesaid Meeting of 1st June, 1985 was therefore null and void". I take the word 'therefore' to refer to the allegation that the meeting lacked for quorum. In a supplementary affidavit however the plaintiff contests the validity of Rules 7 and 8 of the new Rules. Further, a good deal of his submissions was concerned with the provisions of those particular Rules. I consider therefore that in effect the plaintiff seeks a declaration in respect of those particular Rules. They read as follows:

"7. Associate Membership

A. Associate membership shall be open to the following:

(i) Registered Medical Assistants registered under the Medical Assistants Act Cap. 255(A).

(ii) Students of the Medical Course of the Fiji School of Medicine and the University of the South Pacific who are in the clinical years of their studies.

(iii) Medical practitioners who have retired from practice, who would normally be eligible for registration under Part II of the Medical and Dental Practitioners Act, Cap. 255.

(iv) Medical practitioners registered under Part I of the Medical and Dental Practitioners Act, Cap. 255.

B. Associate members are not entitled to hold any office or vote at business meetings of the Association. However, they should receive notice of and are entitled to attend and speak at such meetings.

8. Honorary Membership

Persons, not necessarily members of the medical profession who because of their interest in and assistance to the medical profession and health services in Fiji are deemed to be suitably qualified may be elected to honorary membership by recommendation of the Council, to the Annual General Meeting and ratification by a vote of eight percent of the voting members present."

Rule 9(iii) provides that,

"(iii) Associate members shall be liable to pay an annual subscription of not more than fifty per centum of that paid by ordinary members, the amount of which shall be fixed by Council from time to time".

The plaintiff submits that the provisions of section 41(3) of the Act are quite clear and that membership of the Association is open only to a person "who is registered as a medical practitioner in Part II of the medical register." The plaintiff stresses that the medical practitioner must be registered under Part II of the medical register, and not Part I thereof. I observe that under section 10 of the Act a person conditionally registered under section 9 of the Act, i.e. under Part I of the register, "shall be deemed to be a medical practitioner registered in Part II of the medical register", if other conditions are fulfilled. It would seem therefore that membership of the Association is also open to a person conditionally registered as a medical practitioner,

that is, in Part I of the medical register, provided the conditions stipulated in section 10 are fulfilled. In any event, the plaintiff maintains that the new Rules 7 and 8 do not comply with the provisions of section 41(3), and, I would add, section 10.

I observe that section 32 of the Legal Practitioner's Act Cap. 254 is couched in terms almost identical to those in section 41(1) and (2) of Cap. 255. It will be seen however, under sections 35, 36 and 37 of Cap. 254 that membership of the Fiji Law Society is not confined to legal practitioners in practice, but includes e.g. "such other legally qualified persons ... as may ... be determined", who are admitted to membership upon application, and further that the Council of the Society "may elect as honorary members of the Society, such persons as it may think fit", section 38 providing however that no honorary member shall be liable to pay the prescribed annual subscription. Such provisions are not to be found in Cap. 255.

Mr. Keil submits that the Fiji Medical Association is a voluntary association: membership thereof is not a necessary requirement to the practice of medicine under Cap. 255, whereas to practice law in Fiji one has to be a member of the Fiji Law Society. I agree with the latter submission: to practice law one must first be admitted to practice as a barrister and solicitor and obtain a practising certificate,: thereafter, by virtue of the provisions of section 35(a) and (b) and section 19(4), (6) and (7) of Cap. 254, one automatically becomes a member of the Fiji Law Society with all "the rights or privileges of such membership": nonetheless under section 39 of Cap. 254 a member of the Society "shall not be permitted to resign from membership" while he holds a practising certificate. In any event I accept Mr. Keil's submission that even though the Fiji Medical Association is a statutory body, it is nonetheless a voluntary association, as membership thereof is expressed to be "open" to particular persons.

The long title to Cap. 255 declares that the Act is

> "An Act To Make Better Provision For Medical and Dental Practitioners And To Incorporate The Fiji Medical Association And The Fiji Dental Association."

To that extent the Act under sections 41 and 44 respectively incorporated the two Associations. Under section 44(3) membership of the Fiji Dental Association is "open to every person who is registered as a dental practitioner in the dental register."

It will be seen that neither the Medical Assistants Act Cap. 255A, nor indeed the Nurses and Midwives Act Cap. 256, make any provision for the establishment of any appropriately named association. One of the objects of the Fiji Medical Association is expressed at section 42(m) of Cap. 255 to be

> "to cultivate a generous professional spirit among medical practitioners by encouraging meetings of members of the Fiji Medical Association and persons connected with matters of medical interest;"

It may well be that the Legislature considered that meetings with e.g. Medical Assistants or medical students would be a praiseworthy and worthwhile object, in the interests of the Association and the nation as a whole. That is altogether a different matter however from opening up membership of the Association to such persons and others.

It will be seen that Rule 7B confers on 'Associate Members' the right to attend and speak at meetings. That as I see it confers a right of association and necessarily the right to seek to influence the course of any meeting. Further Rule 9(iii) provides for the

payment of a subscription, even though a reduced one. That aspectmay well ultimately have the effect of conferring proprietary rights upon 'Associate Members'. All of this is contrary to the Act which incorporated the Association, vested property therein, and stipulated, in effect, that membership was confined to medical practitioners registered under Part II of the Medical register.

Mr. Keil submits that nonetheless, as the Association is a voluntary association, the doctrine of ultra vires has no application thereto. There is a dearth of authority in the matter. In the 17th Century case of Sutton's Hospital (1), concerning a charter by which the King had incorporated the first governors of the Charterhouse, the judgment of the court, as reported by Coke, was that,

> "When a corporation is duly created all other incidents are tacite annexed; .... and, therefore, divers clauses subsequent in the charter are not of necessity, but only declaratory, and might well have been left out. As, ... to restrain them from aliening or demising, but in a certain form; that is an Ordinance testifying the King's desire, but it is but a precept and doth not bind in law."

Those dicta were quoted by Blackburn J. in delivering his judgment in the case of Riche v. Ashbury Railway Carriage Co. (2) at p.263. He went on to observe:

> "This seems to me an express authority that at common law it is an incident to a corporation to use its common seal for the purpose of binding itself to anything to which a natural person could bind himself, and to deal with its property as a natural person might deal with his own. And further, that an attempt to forbid this on the part of the King, even by express negative words, does not bind at law. Nor am I aware of any authority in conflict with this case."

Those dicta were adopted by Lord Denning in the House of Lords case Institution of Mechanical Engineers v. Cane (3) to which Mr. Keil has referred me. In delivering his opinion in the House, Lord Denning observed at pp.728/729 I to E:

> "If you are considering a limited liability company, such as the British Iron and Steel Research Association, you know that the purposes of the company are determined exclusively by its memorandum of association. No fresh purpose can in law be pursued, even with the assent of all the shareholders: see Ashbury Railway Carriage & Iron Co. v. Riche (2). So naturally enough you look at the purposes for which the company was originally instituted. But, when you are dealing with a voluntary association of individuals, the doctrine of ultra vires has no place. The purposes of such a society can be changed after its original institution, by the mutual assent of the members, without any record in the formal documents. If the society, without such assent, does in fact pursue a new or additional purpose, not fairly incidental to its original purposes, any member can object and take proceedings to stop it; but no one else can. If no member objects, then you may assume that its new purposes are duly authorised."

> "So also, in the case of a society incorporated by royal charter, the doctrine of ultra vires has no place. Such a society, when duly created by the charter, has in law the self-same capacity as a natural person. The 'divers clauses', as Lord Coke says, 'are not of necessity, but only declaratory, and might well have been left out': See Sutton Hospital Case (1). If it should pursue purposes other than those set out in the charter, its activities are perfectly valid. True it is that any member or any person who is injured by a violation of the charter can take proceedings in the name of the Crown to repeal the charter; but if the Crown takes no such steps, it does not lie in the mouth of the society to say that the purposes which it in fact pursues are ultra vires or beyond its powers: see Riche v. Ashbury Railway Carriage Co. by Blackburn J.(2)."

The judgment of Blackburn J. was reversed on appeal to the House of Lords, but not,I wish to add, because of the passage in his judgment reproduced above. I observe also that Lord Denning was the only one of

five Law Lords to hold in Institution of Mechanical Engineers v. Cane (3), which was a rating case, that regard must be had to the present activities of that Institution to determine the purposes for which it was instituted: Lord Radcliffe apparently was of the opinion that regard could be so had. Nonetheless, there is nothing in the opinions delivered in the House to suggest that any activities outside the charter of the Institution were invalid.

Lord Denning's dicta however, in the passages quoted above, concerned a society incorporated in England by Royal charter, an instrument of distinctive legal character. I do not see that such dicta necessarily apply to an association incorporated by an Act of Parliament. The position in the case of a company incorporated under the Companies Act is clear: as Lord Selborne observed in Ashbury Railway Carriage & Iron Co. v. Riche (2) at p.694,

> "(it is) incorporated only for the objects and purposes expressed in that memorandum:"

Subject then to the question of an exception in the case of a person dealing with the company in good faith, the doctrine of ultra vires applies. Lord Selborne went on to observe in the Ashbury case (2) at p.694 that he was

> "unable to see any distinction for this purpose between statutory corporations under Railway Acts, and statutory corporations under the joint Stock Companies Act of 1862."

Lord Selborne had however earlier said at p.693,

> "I only repeat what Lord Cranworth in Hawkes v. Eastern Counties Railway Company (4) (at pp.934/935 10 E.R.) (when moving the judgment of this House), stated to be settled law, when I say that a statutory corporation, created by Act of Parliament for a particular purpose, is limited, as to all its powers, by the purposes of its incorporation as defined in that Act."

I must confess that I am unable to see any distinction for this purpose between a statutory company as such and a statutory corporate body, that is, a statutory incorporated association.

In any event, as I see it, the dicta of Lord Denning apply to the objects, purposes, activities, or vires of an incorporated association. In the present case the Association has not pursued any object, purpose or activity, nor exercised any power as such which is not contained in the Act. It has instead in effect purported to amend its form of incorporation or constitution, or its statutory personality. The Fiji Medical Association is a statutory association of medical practitioners registered under Part II of the medical register. It was incorporated as such. Rules 7 and 8 purport to change such incorporation. Quite clearly it was never intended that the provisions of section 41(4) of Cap. 255 should produce such effect. Quite clearly any change in the form of incorporation can only be effected by an Act of Parliament.

There is of course nothing to prevent the members from forming an association of medical practitioners (registered or otherwise) and also of the other persons envisaged in Rules 7 and 8. Such an association would not however be the Fiji Medical Association as incorporated under the Act. The effect of Rules 7 and 8 if applied would in fact be to form another Association altogether, a non-statutory one. Quite clearly that was never the intention of the members. There has been no transfer of any property: the Rules themselves and also the minutes clearly indicate an intention to adhere to the terms of the Act. I am satisfied that none of the members realised the true nature of the desired change: there cannot have been any consensus therefore. I do not say that the Association's action in the matter was ultra vires: there was no question of the exercise of any power excessive or otherwise. I simply say that the Association's

action was contrary to the Act and amounted to a nullity, as do Rules 7 and 8.

I observe incidentally that the medical practitioners to whom reference is made under Rule 7A(iv) could well be members of the Association, provided the conditions stipulated in section 10 of the Act are met: if in any case such conditions are not met then membership is not open to the medical practitioner. Again, Rule 6 is not necessarily in conflict with the Act as long as the particular Life Member or Fellow retains the sole statutory qualification for membership, that is, registration under Part II of the medical register.

I do not wish to be understood as being in any way opposed to, or for that matter in favour of the proposals involved in Rules 7 and 8. That is not my function or concern. That is the function and concern of the members of the Association. I appreciate the reasons behind the proposals, as revealed by the minutes. I merely say that as Rules 7 and 8 represent the Association's wishes in the matter, then the only means of giving effect to such wishes is by amendment of the legislation.

The grant of a declaration involves the exercise of the court's discretion. The plaintiff submits that his right of association with his fellow medical practitioners is infringed. There is also the aspect that his proprietary rights within the Association may ultimately be affected. Under the circumstances, in respect of the second declaration sought, I grant a limited declaration. The applications for the first declaration sought and also an injunction are dismissed.

I declare that Rule 7 and Rule 8 of the Rules made by the Association on 1st June, 1985, are each a nullity.

Delivered at Suva This 6th Day of September, 1985.

(B.P. Cullinan)

JUDGE