

1960
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April 1

[BOURKE, C.J., ZEKIA, J. and ZANNETIDES, J.]

G. W. STOW AND
OTHERS
v.
F. HOURY AND
OTHERS.

G. W. STOW AND OTHERS,

Appellants (Defendants).

v.

F. HOURY AND OTHERS,

Respondents (Plaintiffs).

(Civil Appeal No. 4307).

Clubs—Unincorporated members' club—It has no legal existence apart from its members—The Corporate Bodies (Immovable Property Registration) Law Cap. 225—The Registration of Clubs Law, Cap. 147—Both Statutes of a restricted scope—English Law—Property and Funds—Rights of members—Dissolution and liquidation—Extra judicial—Depend on rules—Subject to rules, principles of English Law applicable—Members—Full Members—Other categories—Rights.

Action—Rights of action of members of any category against those acting wrongfully to deprive them of the enjoyment of their privileges.

Judgment—Declaratory judgment—Declarations affecting future rights—Affecting rights of persons not parties to the action.

The Famagusta Club is an unincorporated members' club. Membership of the club falls, under the Rules, within several categories: Full Members, Town Members etc., etc. For the purpose of this case the enquiry may be confined to ascertaining under the Rules (which are set out *post* in the judgment of BOURKE, C.J.) the standing of Full Members and Town Members. The Rules do not contain any provisions as to the dissolution of the Club. At an Extraordinary General Meeting held on the 25th May, 1959, which was attended by fifteen out of the twenty-two Full Members, it was unanimously decided to liquidate the club and distribute any surplus of realised assets over liabilities among all the Full Members. Seven of the Town Members sued to establish what they felt to be their rights and sought various declarations alleging that the defendants (appellants) had no right to dissolve the club, that the Full Members held the property of the Club as trustees for all categories of members and that the sale decided upon was unlawful and void. An injunction was also, sought restraining the defendants from liquidating the Club and disposing of its property. The Court of trial held that the property of the club was vested in the Full Members as trustees. A declaration was also made that the Full Members cannot make a decision for the dissolution of the Club without consulting the members of all other categories and that any such decision is *ultra vires* and of no legal effect. Lastly, the Court of trial granted an injunction sub-

stantially in the terms sought by the plaintiffs. The defendants appealed from that judgment.

The main questions that arose for determination in this appeal were : (a) Whether the plaintiffs had any standing entitling them to bring the action ; and (b) whether the resolution to dissolve the Club and realise the assets of the club, made by fifteen out of the twenty two Full Members at the meeting of May, 25, 1959, was valid and of effect in law.

Held: (1) *affirming the judgment of the Court of trial on this point:-*

The respondents (plaintiffs) were in a position to maintain the action at law. As Town Members they are under Rule 3 (ii) (*v. post* in the judgment of BOURKE, C.J.), entitled to the beneficial user of Club property in order to "share the privileges of members as regards amenities". They accordingly had a right to assert and vindicate as against any one acting wrongfully and not in accordance with the law to deprive them of the enjoyment of their privileges.

(2) *varying the judgment of the lower Court:*

(a) The Rules do not contain any provision as to the dissolution of the Club. Applying the principles of English law and in the light of the rules as to membership, a club of the kind under consideration can be dissolved extra judicially but only with the consent of all its full members. Consequently the resolution taken at the Extraordinary Meeting of the 25.5.59 attended by fifteen out of the twenty two full members whereby it was unanimously resolved to liquidate the Club and distribute the assets among the full members, is null and void.

(b) The decision as to the invalidity of the resolution to dissolve the club, as well the injunction to stand. The other terms of the declarations made by the lower Court to be set aside.

(3) *Per BOURKE, C.J.:*

(A) The Famagusta Club is an unincorporated members' club. A club of this nature is not recognised as having any legal existence apart from the members of which it is composed : *Steele v. Gourley and Davis* (1886) 3 T.L.R.118, 119. The fact that the immovable property happens to be registered in the name of the Club has, in my opinion, no significance so far as any issue in these proceedings is concerned. The law applicable in Cyprus is the same as English law. The members of such a club for the time being are jointly entitled to all the property and funds of the club, the property being usually vested in trustees. It is only upon a dissolution, however, that the individual interests of the members in the property become capable of realisation. Until then their

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rights are merely to enjoy the use of the club premises, if any, and other privileges of the society, in accordance with the rules, so long as they duly pay their subscriptions and continue to be members. The rights and duties of the members of such a club as between themselves, and the internal arrangements for carrying it on, depend upon the rules. Subject to any rule to the contrary, the property and funds of the club belong to the members for the time being jointly in equal shares. The interest of a member in the property of the club is not transferable or transmissible, and continues only during membership (5 Halsbury 3rd edn. pp. 253-4; Daly on Clubs, 5th edn. pp. 2-5). No portion of the property may be alienated by the club, except in the ordinary course of the administration of its affairs, and for the purposes incidental to its objects, without the consent of every member, (*Murray v. Johnstone* (1896) 23 R. (Ct. of Sess.) 981).

(B) I would allow the appeal to the extent of setting aside the declaration expressly made by the lower Court to the effect the Full Members held the property of the Club as trustees for the Town Members and other categories of members. In my judgment the Full Members do not hold the property as trustees as aforesaid and, provided they all consent, the Full Members are entitled to dissolve the Club and dispose of its property, and are solely responsible for its liabilities: if one is to interpret the judgment of the Court of trial as containing a formal declaration to the contrary then in my opinion such declaration should also be set aside. As to the injunction, I consider that it should stand to restrain the appellants from acting under an authority and in pursuance of decisions which have no force or validity.

(4) *Per ZEKIA, J :*

(A) I doubt whether the unanimous consent of all Full Members regardless of the wishes of the members in the remaining categories, of the Town Members in particular, is sufficient for an extra judicial dissolution. Undoubtedly Rules 1, 7, 9 and 11 of the Club Rules, 1957, precluded members other than Full Members from taking part in the management of the Club and vested the property of the Club in the Full Members; yet this club is obviously not an unincorporated proprietary club. The main object of the Famagusta Club is social. Rule 1 (3) reads:- "The Club premises are kept solely for social intercourse between members". The Town Members who by Rule 3 (2) are entitled to share the full privileges as regards amenities of the club are no doubt greatly interested in the life of the club. It is difficult to assume that because—giving full effect to the 1957 Rules—they divested themselves from the right to take part in the management and to claim the property of the club they also agreed to have no say in the dissolution of the club at all. However, this point need not in my view, be decided now.

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(B) As to the remaining points involved in this appeal, relating to the decision of the trial Court that the property of the Club is held by the Full Members or Committee thereof in their capacity as trustees of the Club, I wish also to reserve my opinion. Disposal of assets of the club is a matter which will arise only after the club is properly dissolved and has gone into liquidation. The decision of the trial Court on this matter, as things stand to-day, is in the nature of a declaratory judgment dealing with the future rights of the members in case of dissolution. As a matter of principle I refrain from dealing with the merits of the relevant declaration made by the trial Court which in my view could not properly be made. In taking this course I think I am supported by the following extract from a footnote to Order 25, rule 5 of the Rules of the Supreme Court:—

“ *Future Rights.* The Court has jurisdiction to make a declaration as to the rights depending upon a future event; but the practice is not in ordinary cases to make such a declaration unless (a) a present right depends on the decision or (b) all parties interested in any event are *sui juris* or (c) there are other special circumstances. *Re Staples* 1916 1 Ch. 322 ”. (See the Annual Practice, 1960, p.580).

In *London Passenger Transport Board v. Moscrop*, (1942) A.C. 332, Viscount Maugham in delivering his judgment in the House of Lords said (p. 345):—

“ I also think it desirable to mention the point as to parties in cases where a declaration is sought. The present appellants were not directly prejudiced by the declaration and it might even have been thought to be an advantage to them to submit to the declaration, but, on the other hand, the persons really interested were not before the Court, for not a single member of the Transport Union was, nor was that union itself, joined as a defendant in the action. It is true that in their absence they were not strictly bound by the declaration, but the Courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the Court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made ”.

In the instant case only a small number of Full Members and of the Town Members are parties to the action and I do not think in the circumstances it is appropriate to deal with the future rights and interests of such members.

(C) For the aforesaid reasons, the declaration made by the trial Court as to the proprietary rights of the litigants in case of dissolution and the necessity of a consent by all members of all categories for a resolution to dissolve the club, should

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be set aside. The decision as to the invalidity of the resolution to dissolve the Club as well as the order of injunction to stand.

(5) *Per ZANNETIDES, J.*: In the present case even if we accept the proposition of the defence that Full Members alone had the right to decide the dissolution, it is an admitted fact that not all the Full Members decided the dissolution but only 15 out of 22; therefore their decision is not a decision by all Full Members and is consequently not valid and of no effect in law.

That of course disposes of the question under inquiry and I do not consider it absolutely necessary for the decision to embark on the further question as to what categories of members are entitled to take part in the decision for dissolution and as to the future fate of the property of the club consequent upon dissolution. It would have been otherwise of course had we decided that the decision was valid and of effect in law. These are questions which concern future events and the representation in the action of the parties who might be interested in the case is very small and I prefer, like my brother Judge Zekia Bey, to leave it for the future; and the authorities cited by him support us on this point. It would have been otherwise of course if our decision were, as I have already said, that the club had been validly dissolved.

Appeal allowed to the extent mentioned hereabove. No order as to costs.

Cases referred to:

Steele v. Gourley and Davis (1886) 3 T.L.R. 118;

Murray v. Johnstone (1896) 23 R. (Ct. of Sess) 981;

Re Staples (1916) 1 Ch. 322;

London Passenger Transport Board v. Mosecrop (1942) A.C. 332.

Appeal.

By the defendants against the judgment of the District Court of Famagusta (Michaelides, Ag. P.D.C., A. Loizou, D.J.) dated the 30th January 1960 (Action No. 1537/59) whereby declarations were made and injunction was granted restraining the defendants from liquidating the Famagusta Club, etc.

G. C. Griffith-Williams for the appellants.

A. Pouvouros for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of BOURKE, C.J. On the 1st April 1960 the following judgments were read :

BOURKE, C.J. : The Famagusta Club is an unincorporated members' club. A club of this nature is not recognised as having any legal existence apart from the members of which it is composed, *Steele v. Gourley and Davis* (1886) 3 T.L.R. 118, 119. The fact that the immovable property happens to be registered in the name of the Club has, in my opinion, no significance so far as any issue in these proceedings is concerned. The law applicable in Cyprus is the same as English law. The members of such a club for the time being are jointly entitled to all the property and funds of the club, the property being usually vested in trustees. It is only upon a dissolution, however, that the individual interests of the members in the property become capable of realisation. Until then their rights are merely to enjoy the use of the club premises, if any, and other privileges of the society, in accordance with the rules, so long as they duly pay their subscriptions and continue to be members. The rights and duties of the members of such a club as between themselves, and the internal arrangements for carrying it on, depend upon the rules. Subject to any rule to the contrary, the property and funds of the club belong to the members for the time being jointly in equal shares. The interest of a member in the property of the club is not transferable or transmissible, and continues only during membership (5 Halsbury 3rd edn. pp. 253-4 ; Daly on Clubs, 5th edn. pp. 2-3). No portion of the property may be alienated by the club, except in the ordinary course of the administration of its affairs, and for purposes incidental to its objects, without the consent of every member, (*Murray v. Johnstone* (1896) 23 R. (Ct. of Sess.) 981).

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Before coming to the matters arising for determination on this appeal it is necessary to have a clear appreciation of provisions contained in the rules of the Club. Membership of the Famagusta Club falls within one of the following categories (Rule 2) :— Full Members, Town Members, Country Members, Overseas Members, Temporary Members, Service Members, Mess Members, and Honorary Members. For present purposes the enquiry may be confined to ascertaining the standing *inter se* of Full Members and Town Members— leaving aside Full Membership, no other category of members has any greater rights than the Town Members. Rule 3 sets out to define membership and paragraphs (i) and (ii) read as follows:—

“ 3. (i) FULL MEMBERS. Shall be those who, having been elected by ballot and having paid the full entrance fees, reside in Famagusta-Varosha or, having left those limits continue to pay subscription at full members rates.

The number of Full Members shall be limited to 40 ”.

(ii) TOWN MEMBERS. Shall be those who having been elected by ballot as such or who were Honorary

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Members in 1956, pay no entrance fee. They will share the full privileges of members as regards amenities but have no responsibility for liabilities, may not vote nor take any part in the management of the Club. The number of Town Members shall be limited to 35."

Rule 4 (i) provides.—

"The entrance fee for Full Membership shall be £15 which sum is to be paid on notification of election as Full Member. No entrance fee shall be paid by other categories of Members."

Rule 12 is concerned with the mode of election of members and paragraphs (i) and (ii) are as follows.—

"(i) Any temporary Member or other gentleman who wishes to become a Full, Town or Country Member of the Club must be proposed in writing by one Full Member and seconded by another."

"(ii) Election to Full, Town or Country Membership shall be by a ballot of the Full Members."

Power of election to and expulsion from (Rule 17) membership in any category, including Town Membership, rests with the Full Members for the time being.

Rules 1 (i) and 7 are of particular importance.—

"1 (i) The Club shall be called the "Famagusta Club" and shall be strictly a Private Members' Club, the Members of which, other than those who have been admitted to membership without payment of an entrance fee, are responsible for its liabilities. Members admitted to the Club without payment of an entrance fee shall have no claim on its property or effects nor any vote or interest in the management of the Club."

"7 The property, movable or immovable, of the Club including the Tennis Court and Bathing Hut, shall be vested in those Members who have paid an Entrance Fee in accordance with Rule 3 (i) and maintain their status as Full Members."

The rights and limitations appertaining to Town Membership may now be summed up. Such members pay an annual subscription equal to that of Full Members but no entrance fee. Those who were not Honorary Members in 1956 achieve membership through the method of ballot by Full Members. They are entitled to share the full privileges of members as regards amenities but have no responsibility for liabilities, may not vote nor take any part in the management of the Club, in which they are proclaimed to have no interest and finally they have no claim on the property or effects of the Club.

The Full Members on the other hand have expressly reserved to themselves by virtue of the Rules the full rights of members of a club of this kind, which have been observed in the exposition of law given at the outset of this judgment. It has been argued, and the submission was accepted by the lower Court, that the Club property is merely vested in the Full Members as trustees for all members of whatever category other than the Honorary Members. The Rule says nothing of the kind and if such was the intention it would have been easy to make it clear by the use of appropriate words. I see no sufficient reason to hold that any implied or constructive trust arises and no authority has been put forward in support of the allegation of creation or existence of a trust in the circumstances. In construing Rule 7 one must not overlook Rule 1 (i), the effect of which is that only Full Members can have a claim on the Club's property or effects. In my opinion Rule 7 creates no trust as alleged and does not refer only to vesting in possession; on the contrary, read in conjunction with Rule 1 (i), it establishes that the Full Members for the time being are jointly entitled to the property movable or immovable of the Club, there being no vesting in trustees, and it follows that upon a dissolution the individual interests of such members in the property become capable of realisation.

The Rules do not contain any provisions as to the dissolution of the Club. It is not necessary to consider the circumstances in which a Court having jurisdiction might be led to interfere and order a dissolution because there was no application for such an order in the present case (but see 5 Halsbury 3rd edn. p. 289 and Daly on Clubs 5th edn. p. 83). There is a lack of authority upon the point, but it would seem that, in the absence of a Dissolution Rule, and without any approach to a Court, just as property of a club may be alienated with the consent of every member, a club of the kind under consideration can be dissolved but only with the consent of all its members — in the present instance with the consent of all its "Full Members" (see Wertheimer's Law of Clubs p. 28). I accept that as being the law governing the instant matter and I now turn to the particular circumstances of the case.

Seven of the Town Members of the Famagusta Club brought the action in the District Court against seven of the Full Members in their personal capacities and as members of the Committee of the Club. From the evidence it appears that four of the plaintiffs (respondents) "dropped out" and "are no longer carrying on the action"; no formal step however was taken to discontinue so far as they were concerned or to have their names struck out of the proceedings. In view of a conflict of evidence there was no precise finding as to the number of Town Members and Full Members but it seems clear that there are at least 27 of the former and 22 of the latter. At an Extraordinary General Meeting held on

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the 25th May, 1959, which was attended according to the minutes (exhibit G), and as no one disputed, by 15 out of 22 Full Members, it was unanimously decided to liquidate the Club and distribute any surplus of realised assets over liabilities among all the Full Members. The Committee was authorised to prepare a plan for the carrying out of this purpose and to invite offers for the property movable and immovable. In pursuance of the decision to dispose of the property, and despite the general protests made on behalf of certain Town and other Members with curtailed rights, part of the property, namely, the Bathing Hut, was, according to the finding, sold by the Committee, acting as apparently authorised, for the sum of £6,500.

The Town Member plaintiffs sued to establish what they felt to be their rights and sought various declarations alleging that the defendants (appellants) had no right to dissolve the Club, that the Full Members held the property of the Club as trustees for all categories of members, and that the sale of part of the property was unlawful and void. An injunction was sought restraining the defendants from liquidating the club and disposing of its property. As has been seen the Court of trial came to the conclusion, wrongly in my view, that the title to the Club property was vested in the Full Members as trustees. A declaration was also made — “ that the 22 or 24 Full Members of this club cannot make a decision for the dissolution of the club without consulting all other members forming the great majority of membership, and that any such decision is *ultra vires* and of no legal effect ”. Assuming that such a declaration properly arises out of the terms of the prayer for relief, it will be apparent from the foregoing exposition of what I take to be the law, and having regard to provisions of the Rules of the Club, that a declaration in such form is incorrect and wrong. I think, and would so hold, that the Full Members have power to dissolve the Club and to share equally the value of the property on a realisation after winding up the affairs of the Club provided they all consent to dissolution and the consequent alienation.

Apart from a general claim for damages, which does not now arise, the plaintiffs also sought an injunction restraining the seven defendants from liquidating the Club and “ from selling movable property of the Famagusta Club and appropriating same to themselves. . . . ”. The District Court granted an injunction to prevent the defendants disposing of the property of the Club, which, as has been observed, they were evidently authorised to do as the Committee of the Club in order to carry out the decision of the majority of the Full Members made at the Extraordinary General Meeting of 25th May, 1959.

To my mind the main questions that arise, which were brought into issue on paragraphs 6 and 7 of the statement of

claim and defence respectively, are (a) Whether the plaintiffs have any standing entitling them to bring the action ; and (b) Whether the decision to dissolve the Club and realise the assets made by 15 out of at least 22 Full Members at the meeting of 25.5.59 was valid and of effect in law. As to (a), Mr. Griffith-Williams for the appellants (defendants) did not after some argument see fit to press any proposition with a view to establishing the correctness of an answer in the negative. In my opinion the respondents (plaintiffs) were in a position to maintain the action at law. As Town Members they are under Rule 3 (ii) entitled to the beneficial user of Club property in order to "share the full privileges of members as regards amenities". They accordingly had a right to assert and vindicate as against anyone acting wrongfully and not in accordance with law to deprive them of the enjoyment of their privileges. There can be no doubt, and there is certainly no suggestion to the contrary, that the Full Members taking part in the meeting of 25.5.59 acted *bona fide* and in the belief that they were entitled to arrive at and implement the decisions taken at the meeting. That brings me to the question posed following (b) above. I have said enough to indicate that my view is that no such decision to dissolve the Club and alienate its property would be valid unless there was the express consent of all the Full Members. Mr. Griffith-Williams has made no serious submission to the contrary but he has stated that Full Members who did not attend the meeting did agree to the course decided upon. The fact is, however, so far as the evidence goes, that only 15 out of at least 22 Full Members consented to a dissolution and division of assets on realisation among all the Full Members. Accordingly the respondents were correct in their allegation that the resolutions accepted at the meeting under reference were void and of no effect validly to achieve the objects for which they were agreed to and passed. It has been put forward, I thought with a becoming diffidence, that the record does disclose the consent of all the Full Members in the sense that there was no real dispute about it, and it is as well to deal with this. Counsel for the plaintiff Town Members called a witness before the trial Court and closed his case. Counsel for the defendant Full Members then put in certain documents as evidence in support of his case. The plaintiffs' counsel then addressed the Court on the merits and was followed by Mr. Griffith-Williams for the defendants who at the conclusion of his address stated that he could produce the letters of consent of all the other Full Members "if they are of any use to Your Honour's Court". Apart from the novelty of this procedure or any question as to the admissibility and value of such letters in evidence, there was no consent to this being done or any admission by the other side that any Full Member other than the 15 named in the minutes as attending the meeting had agreed to the course resulting in these proceedings. In the record of the case, however, there is the entry of a remark by one or other Judge of the Court in reply to

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Mr. Griffith-Williams' enquiry that "It is not disputed". Mr. Pouyouros for the respondents has stated here that he heard no such observation and that if he had he would at once have risen to correct an apparent misunderstanding. All through the case, as the record discloses, this element of general consent by all Full Members was very much a subject of contention and from the judgment, whatever the learned Judge concerned may have meant by the remark as recorded, it is clear that the Court accepted — it could not do otherwise on the evidence — that there was no consent by all the Full Members. Had there been such consent it could have been the subject of legal proof at the proper time and in the usual way.

I would allow the appeal to the extent of setting aside the declaration expressly made by the lower Court which has been the subject of reference above. In my judgment the Full Members do not hold the property as trustees for the Town Members and other categories of members and, provided they all consent, the Full Members are entitled to dissolve the Club and dispose of its property, and are solely responsible for its liabilities ; if one is to interpret the judgment as containing a formal declaration to the contrary then in my opinion such declaration should also be set aside. As to the injunction, I consider that it should stand to restrain the appellants from acting under an authority and in pursuance of decisions which have no force or validity. I would make no order as to costs.

ZEKIA, J. : The point which calls for a prompt decision in this appeal is one, namely, whether the resolution passed unanimously on the 25th May, 1959, for the dissolution of the Famagusta Club at an extraordinary general meeting attended to by 15 out of the 24 Full Members of the Club, was lawful and therefore binding on all members of the said Club regardless of what category or class such members may belong to. There is no provision in the 1957 constitution of the Club referring to dissolution.

In the absence of an order by a Court for dissolution I agree that the consent of all members of the Club is required for a decision to dissolve. In Wertheimer's Law of Clubs, at p.28, quoted at the trial, the following appears :—"Where there are no such provisions in the rules of the club, the club cannot be dissolved without the consent of all its members". It has been contended by the appellants that the remaining nine of the full members had also associated themselves with the resolution but I fully agree with the Hon. the Chief Justice that this is not supported by evidence. I doubt, however, whether the unanimous consent of all Full Members regardless of the wishes of the members in the remaining categories, of the Town Members in particular, is sufficient for an extra

judicial dissolution. Undoubtedly Rules 1, 7, 9 and 11 of the Club Rules, 1957, precluded members other than Full Members from taking part in the management of the Club and vested the property of the Club in the Full Members ; yet this club is obviously not an unincorporated proprietary club. The main object of the Famagusta Club is social. Rule 1 (3) reads :— “ The Club premises are kept solely for social intercourse between members..... ”. The Town Members who by Rule 3 (2) are entitled to share the full privileges as regards amenities of the club are no doubt greatly interested in the life of the club. It is difficult to assume that because—giving full effect to the 1957 Rules— they divested themselves from the right to take part in the management and to claim the property of the club they also agreed to have no say in the dissolution of the club at all. However, this point need not, in my view, be decided now.

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As to the remaining points involved in this appeal, relating to the decision of the trial Court that the property of the Club is held by the Full Members or Committee thereof in their capacity as trustees of the Club, I wish also to reserve my opinion. Disposal of assets of the club is a matter which will arise only after the club is properly dissolved and has gone into liquidation. The decision of the trial Court on this matter, as things stand to-day, is in the nature of a declaratory judgment dealing with the future rights of the members in case of dissolution. As a matter of principle I refrain from dealing with the merits of the relevant declaration made by the trial Court which in my view could not properly be made. In taking this course I think I am supported by the following extract from a footnote to Order 25, rule 5 of the Rules of the Supreme Court :—

“ *Future Rights.* The Court has jurisdiction to make a declaration as to rights depending upon a future event ; but the practice is not in ordinary cases to make such a declaration unless (a) a present right depends on the decision or (b) all parties interested in any event are *sui juris* or (c) there are other special circumstances. *Re Staples* (1916) 1 Ch. 322 ”. (See the Annual Practice, 1960, p. 580).

In *London Passenger Transport Board v. Moscrop*, (1942) A.C. 332, Viscount Maugham in delivering his judgment in the House of Lords said (p. 345) :—

“ I also think it desirable to mention the point as to parties in cases where a declaration is sought. The present appellants were not directly prejudiced by the declaration and it might even have been thought to be an advantage to them to submit to the declaration, but, on the other hand, the persons really interested were not before the Court, for not a single member of the Trans-

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port Union was, nor was that union itself, joined as a defendant in the action. It is true that in their absence they were not strictly bound by the declaration, but the Courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the Court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made".

In the instant case only a small number of Full Members and of the Town Members are parties to the action and I do not think in the circumstances it is appropriate to deal with the future rights and interests of such members

I agree, for the aforesaid reasons, that the declaration made by the trial Court as to the proprietary rights of the litigants in case of a dissolution and the necessity of a consent by all members of all categories for a resolution to dissolve the club be set aside. The decision as to the invalidity of the resolution to dissolve the Club as well as the order of injunction to stand. Each party to bear its own costs

ZANNETIDES, J. I had the opportunity and, indeed, the advantage of reading the judgments just delivered by my brother Judges, the Chief Justice and Judge Zekia Bey. I agree with the judgment of the Chief Justice that the two main questions that arise are (a) whether the plaintiffs have a *locus standi* in the action and (b) whether the decision to dissolve the club and realise its assets made by fifteen out of a membership of at least twenty two Full Members at the meeting of the 25th May, 1959, was valid and of effect in law

As to the question (a) I am of the same opinion with the Chief Justice that the plaintiffs, being by the Rules of the Club entitled to the user of the club property in order "to share the full privileges of members as regards amenities"—(Rule 3 (ii)), have a right to assert and vindicate their rights against any one wrongfully interfering with them

As to the question (b) I am of the opinion that in the absence of any provision in the rules of the club for dissolution, which is in fact the case, the decision to dissolve the club and realise its assets made by 15 out of at least 22 Full Members was not a decision valid and of effect in law.

Put in a nutshell the plaintiffs' case is that a decision to dissolve the club must be taken by all its members, Full Members, Town Members, etc. Defendants' answer to this is that Full Members only have the right to decide for the dissolution and that the Full Members decided to dissolve it in their meeting of the 25.5.59

It was admitted in Court that not all Full Members were present at that meeting but only 15 out of at least a member-

ship of 22 and the question is—as we have said—could they take a valid decision to dissolve the Club ?

Except for two enactments in our Statute Book, the Registration of Clubs Law, Cap 147 and the Corporate Bodies (Immovable Property Registration) Law, Cap 225, there is no other statutory provision in our legislation concerning clubs ; those two enactments are of a restricted nature and scope and do not help in the present inquiry and so we must look at the English common law which applies in the present case

In accordance with the English common law the Famagusta Club is undoubtedly an unincorporated members' club With regard to the dissolution of such a club, in the absence of any provision in the Rules and leaving apart the power of a Court to order a dissolution—which is not of course the case—the consent of all the members of the club is necessary This is the opinion expressed by my brother Judges as to the English common law applicable in the case and I agree.

In the present case even if we accept the proposition of the defence that Full Members alone had the right to decide the dissolution, it is an admitted fact that not all the Full Members decided the dissolution but only 15 out of 22 ; therefore their decision is not a decision by all Full Members and is consequently not valid and of no effect in law

That of course disposes of the question under inquiry and I do not consider it absolutely necessary for the decision to embark on the further question as to what categories of members are entitled to take part in the decision for dissolution and as to the future fate of the property of the club consequent upon dissolution It would have been otherwise of course had we decided that the decision was valid and of effect in law These are questions which concern future events and the representation in the action of the parties who might be interested in the case is very small and I prefer, like my brother Judge Zekia Bey, to leave it for the future ; and the authorities cited by him support us on this point It would have been otherwise of course if our decision were, as I have already said, that the club had been validly dissolved

The result is that the declaration that the 22 or 24 members of the Club cannot make a decision for the dissolution of the club without consulting all other members must be set aside , and that part of the judgment which says that the Full Members of the Club hold the property of the Club as trustees for all its members is taken to be a declaration, and is also set aside

The injunction restraining the defendants from proceeding with the liquidation of the Club property should stand

Appeal allowed and the judgment of the Court of trial varied, as indicated hereabove No order as to costs

1960
March 15
April 1
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G W STOW AND
OTHERS
F HOURY AND
OTHERS