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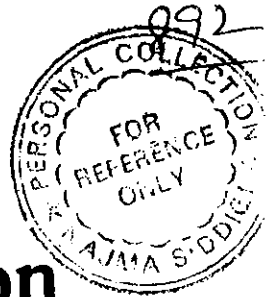
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The Societies Registration Act (XXI OF 1860)



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THE SOCIETIES REGISTRATION ACT, 1860

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The
**SOCIETIES
REGISTRATION
ACT**
(XXI OF 1860)

[21st May, 1860]

**An Act for the Registration of Literary, Scientific
and Charitable Societies**

Preamble : Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes :

It is enacted as follows :

1. Societies formed by memorandum of association and registration : Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under this Act.

COMMENTS

Basis : This Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 of England (17 and 18 Vict., c. 112).

Origin : Besides the associations for commercial purposes, other associations for literary, scientific and charitable purposes are often formed with the progress of civilization. Since such associations may possess properties, movable and immovable, owned not by individual member of the association, but in common, there may arise a dispute between the members themselves or between the members and outsiders. To deal with such a dispute the association concerned must be recognized by law as an entity enabling it to sue and be sued. The present Act has come into existence to lay down a procedure for the registration of such associations or societies in order to give them the legal status of a corporation or a legal person. Like many other countries' enactments this

Act has its origin in English Law. Except its first four sections, it has been framed after the model of the English Literary and Scientific Institutions Act, 1854.

A Registrar is not expected to register a society unless the provisions of Sections 1 and 2 of the Societies Registration Act, have *prima facie* been complied with.

Where the defendants who alleged that the memorandum of association was not signed by seven persons, are not even aware whether or not the memorandum of association had been signed by seven or more persons, and the plaintiffs have produced the certified copy of the registration it is not necessary to prove who the persons were who had actually signed the memorandum of association. Nor is it necessary to file a copy of the memorandum of association.¹

Note : Although societies, organisations and institutions under this Act are not devoid of any right under the law yet these have no separate identity apart from their members. Such domestic tribunals are not juristic persons. In such cases suits can be brought by or against them not by or against the Tribunal in its own name but by or against all the members constituting it. This Act gives domestic Tribunals a juristic personality so that they can be sued or can sue in their corporate names without reference to the members constituting them. The purposes for which societies may be registered are promotion of literature, science, fine arts, diffusion of useful knowledge, diffusion of political education or for charitable purposes. For registration purposes it is necessary that assent to it be given by three-fifths of the members either present personally or by proxy at a general meeting of the society especially convened for the purpose of its governing body. Societies thus registered can frame their own rules or bye-laws and such rules shall be binding on the members so that they can be sued for their contravention. Thus a member who steals, embezzles, destroys or injures any property of the society or cause loss to the society in some other manner can be prosecuted just like a non-member. The society can keep account with Bank in its corporate name. The societies registered under this Act are not, however, partnership and no member can, therefore, claim for any monetary gain or profit out of its activities.

The purposes which societies may be registered have been given in detail in Section 20. Any one or more of such purposes may be adopted by a society but it would be open to alter, extend or abridge them according to the procedure laid down in Section 12.

Preamble : The preamble may be usefully looked at as a guide to ascertain the subject-matter, scope and object of the statute. The preamble is to be considered "a key to open the minds of the makers of the Act, and the mischiefs they intended to redress."

The preamble is not an integral part of a statute, but is merely introductory to an Act. It does no more than explain the intention of a legislation in a few terse words. In fact it is a sort of preface which sets forth, in a concise form, the aim which a particular enactment has in view.

The preamble of a statute states the general object and intention of the Legislature in passing it, and therefore, it is a good means of finding

1. A I R 1969 All. 248.

out its meaning. In cases where the enacting position of any statute is ambiguous or doubtful or produces in the ordinary meaning any absurdity or unreasonableness, the Courts have to see the intention of the Legislature as embodied in its preamble.¹ Where the language and the object and scope of a statute are not open to doubt, the preamble cannot either restrict or extend the enacting part.² If the enacting part of a statute is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, overrides the latter; but if the phraseology of the section is ambiguous or doubtful, the preamble may, however, be referred to for resolving the ambiguity.³ It is the primary duty of a Court to give effect to the intention of the Legislature as is expressed in the words used by it. If the language employed is ambiguous, the interpretation that advances the object of the Act should be preferred to an interpretation that limits the fulfilment of that object.⁴ In the case where the language of a statute admits two views, that view must not be adopted which leads to manifest public injustice, mischief or inconvenience.⁵ Where a word has several meanings and it is doubtful which of these meanings is used in the body of the Act, the Court must look at the preamble to decide which of the several meanings attaching to the word is intended by the Legislature.⁶

The proper function of a preamble is to explain certain facts necessary to be explained before the provisions contained in an Act can be easily understood. If there is a conflict between the preamble and the section of the Act making certain provisions in clear and unambiguous language, it is the section that governs.⁷

It should be noted that the Court must not create or imagine an ambiguity in order to bring in the aid of preamble.⁸

The Act, as its preamble shows, has been enacted to make provisions for improving the legal conditions of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes. It embodies the rules for the registration of these societies. Its preamble has been amended by Act, XXII of 1927 and the words 'the diffusion of political education' have been inserted therein in order to bring within its ambit the increasing number of societies established for the purpose.

It is to be used only for the purpose of ascertaining what the cases are to which the Act was intended to apply.⁹ It is, however, a well-established rule that effect is to be given to the clear words of an enacting clause, though they may go far beyond the language of the preamble, that is, that where the words of an enacting clause are clear and explicit, then their natural and obvious meaning shall not be restricted or cut down by the use of language of less extensive import in the preamble.¹⁰ If, then, the words of the enacting clauses, taken together, are words admitting, according to their natural import, of one meaning, they must prevail notwithstanding an argument to the contrary otherwise derivable from the

1. A I R 1951 Bom. 137 (FB).

2. 1899 A C 143.

3. A I R 1928 Lah. 35.

4. A I R 1949 All. 210 (FB).

5. A I R 1951 All. 119 (FB).

6. A I R 1943 Lah. 1.

7. I L R 43 Mad. 529.

8. 1938 N L J 168.

9. (1827) 3 Russ. 436.

10. (1792) 4 T R 790.

preamble.¹ If, on the other hand, the words are not so clear and explicit as to admit of but one clear and distinct meaning, but reasonable effect may be given to the words used in the enacting clauses by applying to them another meaning, then the preamble may be looked to; to throw light upon the subject. Thus two propositions are quite clear—one that a preamble may afford useful light as to what a statute intends to reach, and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactments.²

Scope of the Act: The Act is one for the registration of literary, scientific and charitable societies and the object of the Act as stated in the preamble is to make provision for improving the legal condition of societies established for the promotion of literature, science, or fine arts, or for the diffusion of useful knowledge, or for charitable purposes. Seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of the Act, may form themselves into a society under the Act subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies.³

The position of a society registered under the Societies Registration Act is more like that of a club or a joint stock company. The position of the members of the society is similar to that of share holders of a company. In order to redress a wrong done to the society, or to recover monies due to it, the action must *prima facie* be brought by the society itself.⁴

The principles governing the relation of members of joint stock companies would apply to the case of a society registered under the Societies Registration Act, the opinion and acts of the majority would be binding on the whole society especially when the rules of the society are to that effect.⁵

Where a society is formed for a certain purpose where permanent object is charitable, the fact that some of the purposes may not be strictly charitable but religious would not render the society anytheless a charitable society if the purpose was one intended to benefit the public or a considerable portion of the public.⁶

Construction: The proper course of construing a statute is, in the first instance, to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of law; and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.⁷ This principle has been acted upon by the Courts of India and Pakistan.⁸ It is a well-settled rule that the statutes should be construed according to the intent of the Legislature which passed them. If the words of a statute are in themselves precise and unambiguous, the words themselves alone do in such case best declare the intention of the Legislature. But if any doubt arises from the

1. AIR 1948 All. 108.
3. AIR 1946 Bom. 516.
5. AIR 1946 Bom. 516.
7. 1891 A C 107.

2. AIR 1949 All. 612.
4. AIR 1941 Bom. 312.
6. AIR 1940 Mad. 167.
8. ILR 28 Cal. 517.

terms employed by the Legislature, it has always been held a safe means of collecting the intention of the Legislature, to call in aid the ground and cause of making the statute.¹ A statute must be construed strictly and the burden lies on the State to show that the case clearly falls within the operation of the statute.² It should also be noted that in construing a statute the words used in it must first be given their ordinary, natural and proper meaning.³

It has been held that hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute.⁴ In order to ascertain the meaning of the words used in an Act all the parts of the Act must be construed together to avoid inconsistencies.⁵ The Court should try to adopt that view which will not make any of the provisions repugnant, that is, to try to harmonise the various provisions and not to lay down the law which cannot be said to have been the intention of the Legislature.⁶ However, where self-conflicting provisions exist in the same enactment the latter shall prevail.⁷

In construing a statute it is not permissible for the Court to suggest modifications of an Act involving entire recasting of its provisions. Such course is only open to the Legislature.⁸

As a rule, in construing an Act the Court has to bear in mind the scheme of the Act and the purpose for which the Act was passed. It is sometimes dangerous to construe the language of one Act having regard to the construction placed by the Court on the language of another Act.⁹ The Supreme Court has held in a leading case that if the terms of the provisions in Local Act are plain and unambiguous the Court cannot have resort to the position in law as it obtained in England or in other foreign countries when the statute was enacted by the Legislature. Such recourse, however, would be permissible only if there was any latent or patent ambiguity and the Courts were required what was the true intent of the Legislature.¹⁰

Ejusdem generis is the rule of construction which must be applied with caution and must not be pushed too far. To invoke the application of this rule there must be a distinct genus or category and specific words must apply not to different objects of varying or widely different character but to something which can be called a class or a kind of objects. Where this is lacking the rule cannot apply.¹¹ This rule is intended to be applied on the established rule that the Legislature presumed to use the general words in a restricted sense.¹²

It is well-settled that in construing the provisions of a statute course should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made

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| 1. AIR 1939 P C 47. | 2. (1908) 1 K B 705. |
| 3. (1958) 33 I T R 313. | 4. AIR 1950 S C 265. |
| 5. AIR 1956 All. 453. | 6. 1961 U P R D 179. |
| 7. 1961 U P R D 179. | 8. AIR 1960 S C 1022. |
| 9. AIR 1959 Bom. 21. | 10. AIR 1959 S C 135. |
| 11. AIR 1963 Cal. 335. | 12. AIR 1957 S C 521. |

so to reconcile the relevant provisions as to advance the remedy intended by the statute.¹

It may be noted that the debates in the Legislature, made while enacting a statute, cannot be used as aid to the construction of that statute.²

Enforcement of the Act : It has been declared to be in force in all the Provinces and the Capital of the Federation, except the Scheduled Districts, by Section 3 of the Laws Local Extent Act, 1874 (15 of 1874).

It has been declared to be in force in Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), Section 3.

It has been declared by notification under Section 3 (e) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, [Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now from the N.-W.F.P.—see Gazette of India, 1901, Pt. 1, p. 867 and *Ibid.*, 1902, Pt. 1, p. 675.]

Extended to : It has been extended, by notification under Section 5 of the lastmentioned Act, to the Scheduled District of Sind—see Gazette of India, 1880, Pt. 1, p. 672.

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.-W.F.P., subject to certain modifications; and extended to the Excluded Area of Upper Tanawal (N.-W.F.P.) other than Phulera with effect from such date and subject to such modifications as may be notified—see N.-W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950.

It has also been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950); and applied in the Federal Areas of Baluchistan. See Gazette of India, 1937, Pt. 1, p. 1499.

Reference to English decisions : Cases frequently occur in which considerable assistance is derived from the Law of England and other countries. In such cases the Courts have to see how far such law was founded on common sense and on the principle of justice between man and man and may safely afford guidance.³ English authorities can be referred to only by way of illustration. They are not in any way binding and considerable caution is necessary in their application.⁴ In construing a section of an Act which is based on English enactment, which in fact reproduces almost word by word the language of an English enactment the Courts in practice, if not in theory, are bound by the decisions of the English Court of Appeal.⁵

Where the language of the sections of English and Pakistan Acts is almost identical, Pakistan Courts would very much hesitate to depart from the view expressed by eminent Judges in England, unless there is something internal in the section itself which would justify its interpretation in a different way.⁶

1. A I R 1959 S C 158.

3. I L R 12 All. 1 (F. B.).

5. 21 C W N 794.

2. A I R 1963 P b. 354.

4. A I R 1942 F C 22.

6. A I R 1953 All. 789.

Sections : Sections are the enacting part of a statute. They are substantive enactments in themselves. They should be strictly construed in their context. If any one contends that a certain section should not be construed literally, he must be able to show that there is some other section which cuts down its meaning or that the section is itself repugnant to the general purview of the statute.¹

Precedents : The object of reference to precedent is to clarify the law for the guidance of the lower Court.² However, decisions on questions of fact cannot be cited as precedents governing the decision of other cases.³ It may be noted that even one single Judge ruling of the High Court should be followed in preference to a later Division Bench ruling of another High Court.⁴ The Supreme Court of India is not precluded from considering the correctness of the decision of the High Court notwithstanding its having held the field for over forty years without question.⁵ The Supreme Court's judgment is binding on High Courts and no other.⁶ The position of Privy Council decisions has been changed after the year 1950. Before 1950 the law laid down by the Privy Council was the law of the country, but after 1950 the Privy Council's decisions are only of a persuasive authority.⁷

As the present Act is mainly based on English Law, a reference to English decision is not only permissible but useful. It is a rule of prudence that a reference to English decision is justified where the language used in a statute is of doubtful import,⁸ or where the principle laid down in the English case does not depend upon any peculiarity in the English Law,⁹ or when a point arises for which there is no positive solution in the Act itself.¹⁰ English Courts form a most valuable guide to the Courts in the country, and therefore, it has been held that English decisions should be considered as an authority.¹¹

Application of the Act : The Act is not applicable only to societies of public or charitable nature but it is also applicable to private societies established for the purposes defined in the Act. The various provisions in the Act itself make it clear that the Act applies to all societies formed prior to the commencement of the Act and to be formed after the commencement of the Act in order to give them the legal status of a corporation for carrying out the purposes for which they were formed or to be formed.¹²

Literary purpose : A Literary Society is charitable. In literary purposes the promotion of art, music drama, archaeology, economic and sanitary sciences are also included.¹³

Scientific purpose : In Chambers' Twentieth Century Dictionary the term 'Science' means knowledge ascertained by observation and experiment, critically tested, systematised and brought under general

1. 8 Q B D 247, 263.

3. A I R 1960 S C 195.

5. A I R 1963 S C 1150.

7. A I R 1959 Bom. 51.

9. 16 I A 44 (P C).

11. A I R 1954 Cal. 258.

2. A I R 1956 All. 466 (F B.).

4. A I R 1953 All. 523 (D B).

6. A I R 1963 Guj. 175.

8. 1891 A C 107.

10. I L R 4 Cal. 483, 491 (F B).

12. A I R 1953 Cal. 140.

13. (1923) 2 Ch. 398.

principles. It has been held that the subject of science is not confined to pure or speculative science but includes various branches of science.¹

Scope: A Registrar is not expected to register a society unless the provisions of Sections 1 and 2 of the Societies Registration Act, have *prima facie* been complied with.

Where the defendants who alleged that the memorandum of association was not signed by seven persons, are not even aware whether or not the memorandum of association had been signed by seven or more persons, and the plaintiffs have produced the certified copy of the registration it is not necessary to prove who the persons were who had actually signed the memorandum of association. Nor is it necessary to file a copy of the memorandum of association.²

Charitable purpose: The expression "charitable purpose" is defined in Section 4(3) of the Income Tax Ordinance, 1979, as including relief of the poor, education, medical relief and the advancement of any other object of general public utility. The popular meaning of the words "charity" and "charitable" does not coincide with their legal meaning. Charity in its legal sense comprises four principal divisions: (1) trusts for the relief of poverty; (2) trusts for the advancement of education; (3) trusts for the advancement of religion, and (4) trust for other purposes beneficial to the community, not falling under any of the preceding heads.³ The trusts last referred to are nonetheless charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as, indeed every charity that deserves the name must do either directly or indirectly.⁴ It has been held that the fourth head is very vague and that it must not be taken to include every object of general public utility.⁵ The Court has to decide on the evidence in each case whether a trust is charitable as being for the public benefit. The opinion of the settlor that his settlement will benefit the public is immaterial.⁶

"The expression 'charitable purposes' in this Act should be understood in a wide sense. If relief of wants occasioned by lack of pecuniary means is charity, adoption of preventive measures to ward off pecuniary wants is also charity".⁷

In the case of *Anjuman Islamiya of Muttra v. Nasir-ud-Din*,⁸ the question arose whether a religious society which had for its object the control and management of and the protection of the property appertaining to the public mosque in question was validly registered under the Societies Registration Act. It was contended that the registration was not legal because the society was one for religious purposes only and not for charitable purposes. The Allahabad High Court negatived the contention and ruled that a religious purpose may be a charitable purpose and that a society for religious purposes will ordinarily be a society for charitable purposes and that any mode of promoting the welfare of mankind would be a charitable object and the phrase "Charitable purposes" as used in this Act is not restricted to the giving of alms or other charitable reliefs but that it has a much wider legal meaning. This decision was followed

1. 1908 A C 162.

3. 65 L T 621.

5. (1896) 2 Ch. 451.

7. A I R 1930 Cal. 397.

2. A I R 1959 All. 248.

4. 1924 A C 496.

6. (1923) 1 Ch. 237.

8. 1906 A W N 59.

in a later case of the Madras High Court, viz., *Khaji Muhammad Hussain v. Masjid Muhammad Jamiat Managing Committee of Pudukot*.¹ In this case it was clear from the Memorandum of Association and the rules and bye-laws of the association in question that one of its main objects was to conduct the affairs of the mosque by collecting subscriptions, pay the salaries of the servants and incur expenses for the upkeep of the mosque and do everything which a manager of a mosque is required to do. From subscriptions so received the above expenses should be met and the balance amount should be utilised for the propaganda of Islamic education, for rendering pecuniary help to the poor, *mustaffis* and worthy *alims* and *ulamas* for removing their difficulties, for other necessary and proper charities, settled then and there by Hanafi and Shafi and for conducting all affairs and for purchasing immovable properties for the perpetual maintenance of the said mosque. It was held on these facts that there was no doubt that the paramount object of the society was charitable and that the fact that one of the purposes was the management of the affairs of a mosque cannot take away from it the character of the society as a charitable society. The society was, therefore, held to have been validly registered under the Act.

The expression "charitable purpose" in the Act should be understood in the wider sense. Adoption of preventive measures to ward off pecuniary wants is charitable.²

A resolution giving preferential treatment to Guru of one particular mutt is opposed to basic principle of equality of treatment. Such a resolution was therefore held to be void.³

Though the Local Courts have been advised many a times that the expression 'charitable purposes' must be construed according to its actual language and meaning in the country's Acts without being bound by the English decisions on the law of charities,⁴ nevertheless, the English decisions have always been helpful and guiding factors to the Local Courts. The preamble of the Statute of Elizabeth⁵ which has been expressly preserved by the Mortmain and Charitable Uses Act of 1888, enumerates the following purposes as being charitable:

The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning; and free schools of scholars in Universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriage of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; the aid or case of any poor inhabitants concerning the payment of fifteens; setting out of soldiers and other taxes.

Sir Samuel Romilly, in the leading case of *Morris v. Bishop of Durham*⁶ makes a classification of the charities under these main heads:—

Firstly, relief of the indigent in various ways; money, provisions,

1. A I R 1940 Mad. 167.

3. A I R 1931 Mad. 12.

5. 43 Eliz. C 4.

2. A I R 1930 Cal. 397.

4. A I R 1954 P C 88.

6. 10 Ves. 522.

education, medical assistance, etc..

Secondly, the advancement of learning ;

Thirdly, the advancement of religion ; and

Fourthly, the advancement of objects of general public utility."

Lord Macnaghten in his celebrated list of charitable purposes set out in a leading case¹ gives the following classification :

"Charity in its legal sense comprises four principal divisions : trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

It may, however, be noted that Lord Macnaghten does not mean that all trusts for the purposes beneficial to the community are charitable,² but that there are certain charitable trusts which may fall within that category.³ On the question as to what is beneficial to the community, the early view was that those purposes were charitable which in the opinion of the donor were beneficial to the public.⁴ But this view was later on questioned and it was held that the "opinion of the donor of a gift or the creator of the trust that the gift or trust is for the public benefit does not make it so ; the matter is one to be determined by the Court on the evidence before it."⁵

In the country the expression 'charitable purposes' was defined for the first time in the Charitable Endowments Act, 1890 (VI of 1890). Section 2 of that Act defined 'charitable purposes' as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility but not including a purpose which relates exclusively to religious teaching or worship." This definition of 'charitable purposes' expressly excludes a purpose which relates exclusively to religious teaching or worship. It appears to have been based on Sir Samuel Romilly's definition of the term. However, it may be noted that the legal conception of charitable purposes has developed itself according to the popular notions in the country.⁶ In this connection it is remarkable to note that the legal meaning of 'charity' is different from its popular meaning. In popular language, it is used in a wider and also in a limited sense. In its widest sense it denotes all good affections men ought to feel towards each other, and in its limited sense, it is synonymous with relief of poverty. But in its legal sense charity has neither the wider nor the limited meaning. It has a technical meaning which is that a charitable purpose according to the relevant law must come within its ambit. Thus, "if one examines the large mass of judicial decisions on the point, the conclusion would be irresistible that while on the one hand the legal meaning of charity embraces within its scope various cases which could not be deemed charitable in the ordinary sense, yet on the other hand many objects are excluded which are popularly regarded as charitable". For instance, a benevolent purpose, or a philanthropic purpose, or a pious purpose, or a trust for hospitable

1. (1891) 3 T C 53, 96.

3. 1924 A C 262-65.

5. 92 L J Ch. 326.

2. (1896) 2 Ch. 451 C A.

4. 35 T C 661.

6. A I R 1946 Bom. 144.

purposes were held as not charitable in the legal sense. As against it, a trust for the promotion of temperance by establishing a public house or home where only non-alcoholic refreshment could be obtained,¹ an association whose main object was to promote musical festivals,² a society formed for the improvement of live-stock, poultry, implements connected with agriculture, horticulture, etc.,³ an institution established for advancement of mechanical science,⁴ a society formed for the purpose of maintaining a choir to promote the practice and performance of musical works,⁵ a trust for the promotion of the music of the particular composer,⁶ and encouragement of Boys Scouts Movements,⁷ were all held as charitable purposes.

It is no doubt that a precise and complete definition of 'charity' in the legal sense is difficult to frame. It has, however, been held that the most comprehensive and carefully drawn definition is that "it is a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion by relieving their bodies from disease, suffering or constrained, by assisting them to establish themselves for life or by erecting or maintaining public buildings or works or otherwise lessening the burdens of Government."⁸

Under the Societies Registration Act a society formed for charitable purposes is registrable. The question whether a society formed both for charitable and religious purposes is registrable or not came up for consideration before the Madras High Court in a leading case. Their Lordships held that it is unnecessary to go into the question whether an exclusively religious purpose is a charitable purpose and whether a society formed for such a purpose would be a charitable society within the meaning of the Act, because where a society is formed for certain purposes whose paramount object is charitable, the fact that some of the purposes may not be strictly charitable but religious would not render the society less charitable society.⁹ The Allahabad High Court also held that a society for religious purposes would ordinarily be a society for charitable purposes.¹⁰ A society whose object is to adopt preventive measures to ward off pecuniary wants would be a charitable society within the Act in the same way as one for the relief of wants occasioned by lack of pecuniary means.¹¹ A society formed for the diffusion of useful knowledge may, as well, be a charitable institution within the legal meaning of the term.¹² If instead of specifying any particular object the word 'charity' is simply used without any qualification, a general charitable intention for objects well recognised as charitable in law should be assumed.¹³ The essential factor to determine whether it is a charity or not would be whether there is any private gain by setting up the institution or society.¹⁴

1. 11 T C 353.

3. 13 T C 58.

5. 25 T C 26.

7. (1954) 1 W L R 1500.

9. A I R 1940 Mad. 167.

11. A I R 1930 Cal. 397.

13. A I R 1946 Bom. 337.

2. 11 T C 154.

4. 16 T C 158.

6. (1957) 1 All. E R 854.

8. A I R 1960 Mad. 467.

10. 1906 A W N 59.

12. A I R 1939 All. 557.

14. A I R 1955 Bom. 250.

Among the Hindus charity and religion overlap each other and in the Hindu system there is no line of demarcation between the two. The Hindu religious and charitable acts have been classified under two heads—*Ishta* and *Purtha*. *Ishta* means vedic sacrifices, rites and gifts in connection with the same; *Purtha* means pious and charitable acts which are unconnected with the vedic sacrifices. The expression *'dharma'* includes both *Ishta* and *Purtha* works.¹ No exhaustive list of such works has been drawn up by the Hindu law-givers and they include all acts of piety and benevolence, whether sanctioned by Vedas or by the popular religion.²

Among the Muslims all works of charity or public utility not condemned by the Muslim religion are proper objects of wakf.³ But the tests of general public utility apply to wakfs as well, and only those settlements which are for the benefit of the public would qualify as for charitable purposes.⁴ As for the members of other communities there are no settled rules defining what are not religious or charitable purposes.

It may be noted that a charitable purpose is not made non-charitable by indicating that one of the places where it may be performed or achieved is within the four walls of a non-charitable institution.⁵ Again, a charitable purpose is not vitiated merely because in order to obtain funds to carry out the object, privileges and benefits are offered to certain persons.⁶ There is nothing necessarily inconsistent with a purely charitable object in the inclusion in the organisation of the association of some department intended to run at a profit and so to contribute to the accomplishment of the association's charitable purposes.⁷ But a society formed for the purpose of merely benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved, would not be one for charitable purpose.⁸ However, if the benefit offered to the members is merely incidental to the promotion of the charitable purpose, the charitable purpose is not vitiated.⁹ If one of the ways in which the public object of a society can be served is by giving special advantages to the members of the society, the society does not cease to be for a charitable object because incidentally, and in order to carry out the charitable object, it is, both necessary and desirable, to confer special benefit upon the members. It such cases the distinction must be borne in mind between the purpose of the society and the object of the individual member.¹⁰ Where the object of a society is not predominantly charitable one, but merely to promote the interest of the members, then, even if the collateral object is promotion of a charitable purpose, the object of the society will cease to be charitable at all.¹¹

1. 1 L R 30 Mad. 340.

2. Mukherjee : Tagore Law Lectures, p. 65.

3. Wilson : Digest of Anglo-Mohammadan Law, p. 322.

4. (1941) 9 I T R 375.

5. (1941) 1 Ch. 253 C A.

6. 13 T C 58.

7. 11 T C 335.

8. 13 T C 58.

9. 16 T C 158.

10. 1896 A C 296.

11. 10 T C 73.

Corporation : A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form and vested by the policy of the law with the capacity of the acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive, according to the design of its institution, or the powers conferred upon it either at the time of its creation or at any subsequent period of its existence.¹

In Grant's Law of Corporations (1850), a corporation is defined as "a continuous identity, bridged at its creation with capacity for endless duration; residing in the grantees of it and their successors, its acts being determined by the will of a majority of the existing body of its grantees or their successors at any given time, acting within the limits imposed by the constitution of their body politic, such will being signified to strangers by writing under the common seal; having a name, and under such name a capacity for taking, holding and enjoying all kinds of property, a qualified right of disposing of its possessions; and also a capacity for taking, holding and enjoying but inalienably, liberties, franchises, exemptions and privileges; together with the right and obligations of suing and being sued only under such name."²

In law an individual corporator, or members, which it is composed are something wholly different from the corporation itself; for a corporation is a legal *persona* just as much as an individual.³

Formation of society : A perusal of the Societies Registration Act makes it clear that, when a prescribed number of persons are associated for any literary, scientific or charitable purpose or for any such purpose as is described in Section 20 of the Act by subscribing their names to a memorandum of association and filing the same with the prescribed registering authority, a society comes into existence in the eye of law. When a society is formed accordingly and registered, the provisions of the Societies Registration Act will apply to it and such bye-laws of the society as are found inconsistent with them will become inoperative.⁴

Position of registered society : Kanja, J., in the leading case of *Krishnan v. Suidran*⁵ held that :

"the position of a society registered under the Societies Registration Act, XXI of 1860 is more like that of a club or a joint stock company."

Thus a society formed under this Act is a corporation and has a separate existence apart from its members and can sue and be sued in its corporate capacity.⁶ Like Corporation a registered society can be a trustee of a charity.⁷

1. Halsbury, Vol. 8, p. 3.

2. Quoted in Halsbury, Vol. 8, p. 4.

3. A I R 1950 All. 480.

4. A I R 1939 All. 557.

5. 48 Bom. L R 562.

6. 1940 M W N 1015

7. 1 L R 18 Bom. 401.

Managing Committee's right to refuse subscriptions: No suit lies by a member of the public against the managing committee of a society or institution which is managed by public subscriptions to enforce the right to subscribe and to be admitted to the privilege of membership.¹

Status of society: A society formed under the Societies Registration Act is a corporation and it has a separate existence apart from its member and can sue and be sued in its corporate capacity.²

A society registered under the Societies Registration Act is, and enjoys the status, of a legal entity apart from the members constituting the same, and is capable of suing or being sued.³

Where the object of an institution is to help the cause of education from the income and interest arising out of the trust fund, the institution has to be registered under the Societies Registration Act, 1860, in order to enable it to acquire a judicial status. In the absence of non-registration under the aforesaid Act all the trustees in charge of the fund have alone a legal status.⁴

Institution: While the present Act contains the term "Society", the corresponding term "Institution" is used in the corresponding English Act, viz., the Literary and Scientific Institutions Act. The essential idea conveyed by the word "Institution" in connection with such adjectives as "literary" and "scientific" is often no more than a system, scheme, or arrangement by which literature or science is promoted without reference to the persons with whom the management may rest, or in whom the property appropriated for these purposes may be vested, save in so far as these may be regarded as a part of such system, scheme, or arrangement.⁵

An institution whose object is to help the cause of education from the income and interest arising out of trust fund has got to be registered under the Societies Registration Act in order to enable it to acquire a judicial status. In the absence of registration under the said Act all the trustees in charge of the fund have alone a legal status. Where a promissory note had been executed in favour of the institution which had no judicial status and was therefore void, no suit can be instituted to enforce it on behalf of the institution.⁶

Science: The word "science" is not confined to pure speculative science alone but includes various branches of science, such as mechanical or engineering science.⁷ A society instituted for the cultivation and promotion of medicine and surgery, and the branches of sciences connected therewith, has been held to be a scientific society.⁸

Fine Arts: The expression "fine arts" has been defined thus: "Arts appealing to the sense of beauty; music, painting, sculpture, architecture, etc., are some of the chief arts."⁹ Music has been held to be a "fine arts."¹⁰

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| 1. A I R 1916 Oudh 94. | 2. A I R 1940 Mad. 949. |
| 3. A I R 1946 Bom. 516. | 4. A I R 1934 Nag. 207. |
| 5. 1896 A C 500. | 6. A I R 1934 Nag. 207 (2). |
| 7. (38) 6 T L R 456. | 8. 1908 A C 162. |
| 9. The Law Lexicon by P R Iyer. | 10. 1 Q B 809, 817. |

As to difference between "fine art" and "profession art", see *R. v. Cockburn*.¹

Education: The term "education" in general means training up the young in general learning and does not extend to teaching for a business or profession, as civil engineering.²

Incorporation of societies under the Companies Ordinance, 1984: Associations for promoting commerce, art, science, religion, charity or any other useful object can also be registered under Section 42 of the Companies Ordinance, 1984 which runs as under:

42. Power to dispense with "Limited" in the name of charitable and other companies: (1) Where it is proved to the satisfaction of the Authority that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful object, and applies or intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Authority may grant a licence and direct that the association be registered as a company with limited liability, without the addition of the words "Limited", "(Private) Limited", or "(Guarantee) Limited", as the case may be, to its name, and the association may be registered accordingly.
- (2) A licence under sub-section (1) may be granted on such conditions and subject to such regulations as the Authority thinks fit and those conditions and regulations shall be binding on the association and shall, if the Authority so directs, be inserted in the memorandum and articles, or in one of those documents.
- (3) The association shall on registration enjoy all the privileges of a limited company and be subject to all its obligations, except those of using the word or words "Limited", "(Private) Limited" or "(Guarantee) Limited", as the case may be, as part of its name.
- (4) A licence under this section may at any time be revoked by the Authority, and upon its revocation the registrar shall enter the word or words "Limited", "(Private) Limited" or "(Guarantee) Limited", as the case may be, at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by the preceding sub-sections:

Provided that, before a licence is so revoked, the Authority shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

1. (1852) 16 Q B 480.

2. 19 Q B D 610.

Registrar of Joint Stock Companies : In Sections 1 to 18 of this Act, the words "Registrar of joint stock companies" is to be construed to mean the Registrar under the Companies Ordinance, 1984.

Applicability of the Land Acquisition Act : A society registered under the Societies Registration Act, is deemed to be a company within the meaning of the Land Acquisition Act, 1894 and land can be acquired for that society under the Act.

Section 3 (e) of the Land Acquisition Act, 1894 is as under :

"3. (e) The expression "Company" means a Company under the Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890 or incorporated by an Act of Parliament of the United Kingdom or by a Pakistan law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Co-operative Societies Act, 1912."

2. Memorandum of Association : The Memorandum of Association shall contain the following things (that is to say) :—

the name of the society,

the objects of the society,

the names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than five of the members of the governing body, shall be filed with the memorandum of association.

COMMENTS

Memorandum of Association : A memorandum of association is the charter of a society and sets out its constitution. It is really the foundation on which the structure of a society is based. It defines its relation with the outside world and the scope of its activities. Its main purpose is to enable the members and others who deal with the society to know what is its permitted range of enterprise. No authority of a society can go beyond the limitations laid down by the memorandum and if any activity does fall outside the scope of memorandum, it becomes *ultra vires* the society.¹

Any seven or more persons subscribing their names to the memorandum of association may form a society and for its incorporation the memorandum of association, corrected and certified at least by three members, along with the rules and regulations of the society, must be filed with the prescribed registering authority.

1. 22 Q B D 470.

FORM OF MEMORANDUM OF ASSOCIATION

Fee Rs. 50/-

Name of Society

(Registered under Act, XXI of 1860)

Memorandum of Association

1. The name of the Society is.....
2. The Registered office of the society is situated at.....in the state of.....
3. The objects for which the society is established are :—
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
4. The names, addresses and descriptions of the present members of the governing body are :—
 - (a)
 - (b)
 - (c)
 - (d)
5. The undersigned are desirous of forming a society :—

1. Signatures	Address and description	Name, address and description of witnesses.
2.		
3.		
4.		
5.		
6.		
7.		

Member : A member is a person who has either subscribed to the memorandum of association or has agreed in writing to become a member of a society and whose name is entered in its register of members. He is admitted according to rules and regulations of the society, and also according to them he may resign or retire from membership. The members of a society are fluctuating body.

No individual member of a society can enter into a contract on behalf of society without express authority and cannot bind it by his acts. The society incorporated under the Societies Registration Act is only capable of entering into a contract. The registration confers on the society a legal personality and consequently any contract entered into by it would be legally enforceable, unless it was vitiated by an illegality or was shown to be void for any other reason.¹

1. 1959 M P C 102.

Director : The expression 'director' has the same meaning as assigned to it in the Companies Ordinance, 1984. Section 2 (13) of this Act defines this term as follows :

"Director includes any person occupying the position of director by whatever name called."

Governing body : The governing body under this Act shall be the governors, council, directors, committee, trustees or other executive body to whom by the rules and regulations of the society the administration and management of its affairs is entrusted. It has a distinct existence from the individual members of the society. It is constituted amongst the general body of the society by election or nomination in accordance with the rules and regulations of the society.

Rules and Regulations : For carrying out the objects mentioned in the memorandum, and for internal management of the society, rules may be made by the society and these rules are known as the rules and regulations of the society. The rules and regulations of the society must also be filed along with the memorandum with the registering authority for the purpose of registration of the society. If the rules and regulations of a society are inconsistent with the provisions of this Act they are invalid, and the fact that they are filed with the registering authority for the purpose of registration of the society cannot make them valid.¹

Rule authorising Executive Council to appoint principal executive officer subject to approval of Government—Jurisdiction of Government to prescribe conditions of service : Where under Rule VIII of the Rules framed by a society registered under the Act, the Executive Council is authorised to appoint the principal executive officer subject to approval of the Government of India and his term of office including other conditions of service are to be prescribed by the Executive Council, the approval of the Government is necessary not only to the person to be appointed but also to his term and other conditions of service.²

Article 4 (f) of memorandum of association of society requiring prior concurrence of Government for fresh appointment. Approval of Government obtained by the Executive Council after making recommendation by way of resolution would not amount to prior concurrence.³

3. Registration Fees : Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the Provincial Government may, from time to time direct, and all fees so paid shall be accounted for to the Provincial Government.

COMMENTS

Registration of society—Burden of proof : Where it is sought to dispute the registration of a society, it is not necessary for the party

1. A I R 1939 All. 557.
2. 1977 Andh. L T 361 (D B).
3. 1977 Andh. L T 381 (D B).

seeking to uphold the registration to prove the signatures to the original memorandum of association of the society ; but the presumption of registration which arises in favour of the society does so, not on the certificate of registration granted by the Registrar under Section 3 of the Act, but on the copies certified under Section 19, and of the rules and regulations and of the memorandum of association of the society. Thus in the case of *Sunder Singh v. Sunder Singh*,¹ a committee authorised two of its members to institute a suit. The defendants in the action objected that there had been no due authorisation of the members to institute the proceedings, the ground of the objection being that the plaintiffs had not discharged the burden laid on them by Section 106 of the Evidence Act in that they had failed to prove that due notice had been given to the members of the committee of the meeting at which the resolution was passed which authorised the two plaintiffs to file the suit. The Privy Council held that the proof of the minutes of the meeting in question was sufficient to discharge the burden resting on the plaintiffs.

Society registered under the Act enjoys the status of legal entity apart from the members constituting it. It can sue and be sued.²

It is incumbent upon the Registrar to issue a certificate under his hand to the effect that the society is registered under the Act after being filed with him the memorandum of association and certified copy of rules and regulations and depositing the prescribed fee. This certificate of registration, however, does not raise a presumption that the society is duly registered. Only the rules and regulations and the memorandum certified under Section 19 of the Act constitute a *prima facie* proof of registration and of the matter contained therein.³

Certified copy of registration of society under Act produced. Presumption as to signature of persons on memorandum of association under Section 19 of the Act and under Section 114, Illustration (e), Evidence Act are rebuttable.⁴

Society registered under the Act will assume its legal character. It enjoys the status of legal entity apart from the members constituting it and it can sue and be sued by its corporate name.⁵

Employee of registered society, if holds civil post was dismissed by Principal of the School of that society. The Principal also an employee of that Society, hence the remedy of writ against the principal is valid.⁶

Effect of registration : A society when registered under the Societies Registration Act according to its provisions becomes a body corporate with perpetual succession and a common seal. After such an incorporation it becomes a legal person with separate existence distinct from its members.⁷ A society, so registered, is a legal person just as an individual but with no physical existence.⁸ As such it can acquire and hold property and can sue and be sued.⁹

1. I L R 1938 Lah. 63.
2. A I R 1970 Pat. 163.
3. A I R 1938 P C 73.
4. A I R 1969 All. 248.
5. A I R 1950 Pat. 163.
6. A I R 1970 Pat. 163 (D B).
7. A I R 1955 S C 74.
8. (1854) 5 H L C 86.
9. (1940) 2 M L J 554.

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1. I L R 1938 Lah. 63.

2. AIR 1970 Pat. 163.

3. AIR 1938 PC 73.

4. AIR 1969 All. 248.

5. AIR 1950 Pat. 163.

6. AIR 1970 Pat. 163 (D B).

7. AIR 1955 SC 74.

8. (1864) 5 H L C 86.

9. (1940) 2 M L J 554.

It should, however, be noted that a society registered under the Societies Registration Act differs from a company incorporated under the Companies Act in certain respects. The share-holders of a company hold the properties of the company as their own and on its dissolution they can claim their beneficial interest therein; but in the case of a society the members of the society do not have any proprietary or beneficial interest in the properties of the society and so upon its dissolution they cannot claim any interest in the properties of the dissolved society. What they are entitled to, the right of management of the properties of the society for achieving its aims and objects.¹

There has been a controversy whether a society registered under the Societies Registration Act is a person within the meaning of Section 236 of the Succession Act. The Allahabad-High Court has held that a grant of letters of administration can be made to a society registered under the Societies Registration Act as it is a person within the meaning of Sec. 236 of the Succession Act.² But the Lahore High Court has held a contrary view. According to it neither a probate nor a letter of administration can be granted to an association of individuals unless it is a company satisfying the conditions laid down by the rules of respective Government and a society, by reason of its registration, does not cease to be an association of individuals.³ However, the trend of decision of Courts in the country is in favour of the view that a probate or letter of administration under Sections 223 and 236 of the Succession Act can be granted to a society registered under the Societies Registration Act,⁴ since a society registered under this Act is more like that of a club or a joint stock company.⁵

It may be noted that registration of the society confers on it certain privileges. The identity of the society remains continuous by reason of the registration under the Act, notwithstanding its members and the governing body are not always the same.

Effect of non-registration: In the absence of registration the society has no legal status, and therefore, it cannot sue and be sued.⁶ A non-registered society may exist in fact but does not exist in law. It is immaterial under the Act whether the society is registered, but where the benefit is claimed, the registration of the society under the Act is required.⁷

Registration of societies having similar names: It is no doubt that the law does not in general recognise any exclusive right to the use of a name personal or local. However, as a rule of convenience, if a society proposed for registration has a name similar to the name of an existing one and the proposed society is registered, the existing society can restrain the so proposed society by means of an injunction on the ground that the business of the existing society would be seriously interfered with and damaged by reason of confusion in the mind of the public resulting from similarity of names.⁸

1. AIR 1958 A P 773.

3. AIR 1948 Lah. 54.

5. AIR 1941 Bom. 312.

7. AIR 1959 M P 172.

2. AIR 1950 All. 480.

4. AIR 1946 Bom. 516.

6. AIR 1934 Nag. 207.

8. AIR 1952 Cal. 804.

There are certain special statutes which entitle companies and business concerns to the exclusive use of a name or a mark, e.g., the Companies Act or the Trade Marks Act. The Court affords protection to trading or professional concerns by granting an injunction restraining the adoption and use of such a name by another. If it is satisfied that damage would be caused by reason of confusion in the mind of the public or by reason of the public being deceived by the use of such name. This protection is also extended to charitable and other societies as well. In a leading English case this protection was extended to a charitable institution incorporated by the Royal Charter for the purpose of taking over and carrying on the management of a voluntary association known as British Legion.¹ The principles of this English case were also applied in a Bombay case where an idol in a particular temple had acquired prominent fame and another temple of the same name was made with the installation of an identical idol and the latter was restrained by an injunction.²

Whether society was registered under the Act: To prove the registration of the plaintiff-society the plaintiff ought to have filed the certificate of registration as well as the certified copy of Memorandum of Association and the rules and regulations of the plaintiff-society which are *prima facie* evidence of the matters therein contained under Sec. 19. Under law the Memorandum of Association and the rules and regulations of the plaintiff-society could be proved by filing the certified copies of these documents. Under Section 65 of the Evidence Act filing of the certified copy of the document was essential and no other kind of secondary evidence was admissible. Oral of the various witnesses produced by the plaintiff was of no use to prove that the plaintiff-society was a registered society.³

Mutual benefit societies: Mutual benefit societies do not come within the purview of the Societies Registration Act but the provisions of the Companies Act shall be applied to them. Under this section the Federal Government is authorised to declare by notification in the official Gazette, subject to such exceptions and modifications as may be specified in the notification, such mutual benefit societies or *nidhis*.

Status of registered society: A society registered under the provisions of the Act, even if not a corporation in the full sense, is certainly a legal person.⁴

Once the society is registered under the Act with the Registrar by the filing of the memorandum and certified copy of the Rules and Regulations and the Registrar has certified that the society is registered under the Act, it enjoys the status of a legal entity apart from the members constituting the same. The registration of the society confers on it certain advantages. Even though the members of the society or the governing body fluctuate from time to time, the identity of the society is sought to be made continuous by reason of the provisions of the Act.⁵

Where the object of an institution is to help the cause of education from the income and interest arising from the trust, it has to be registered

1. 48 R P C 555.

3. AIR 1980 (NOC) 13 (Delhi).

5. AIR 1958 Andh. Pra. 773.

2. AIR 1940 Bom. 205.

4. AIR 1950 All. 196.

under the Act in order to enable it to acquire *juridical* status. In the absence of such registration the trustees have no legal status. Thus a promissory note exceeded in favour of an institution having no *juridical* status under the Act is void and the institution cannot bring a suit on such pronote.¹

Application of Charitable Endowments Act: There is no prohibition in the Charitable Endowment Act from applying its provisions to a society registered under the Societies Registration Act. The Charitable Endowments Act does not contain any reservation nor does it make any exception with regard to registered societies.²

Charitable purpose—Interpretation: Main and predominant purpose of Society in suit was religious and not charitable. It is not a charitable society within the meaning of the Act. Registration of society is without jurisdiction.³

Grant of Injunction: When the defendants had applied to the Registrar Joint Stock Companies at Calcutta to register an association under the name and style of "The Indian National Congress" as a society under the Act and where the plaintiffs as representatives of the old Congress Organisation started in 1885 sued the defendants for an injunction restraining them from getting the society registered under that name or similar name and also applied for an *ad Interim* injunction, it was held that the act of the defendants in getting the society registered tended to injure and cause damage to the plaintiffs in their organisation and as a matter of law that was sufficient ground for granting injunction.⁴

4. Annual list of managing body to be filed: Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

COMMENTS

Who can convene a meeting: In order to be a duly constituted meeting it must be convened by the person authorised to convene it.⁵

Notice of meeting: The notice of the meeting and the business to be transacted must be given to every member of the society entitled to attend, unless the meeting is held on the day specified in the constitution of the society.⁶

Opportunity of attending the meeting must be given to every member entitled to attend. The meeting cannot be valid if a member to whom it is reasonably possible to summon, is not summoned, even though the omission is accidental.⁷

1. A I R 1934 Nag. 207.
2. A I R 1958 Andh. Pra. 773.
3. A I R 1980 Pat. 138.
4. A I R 1952 Cal. 804.
5. Halsbury, Vol. 8, p. 51.
6. Halsbury, Vol. 8, p. 52.
7. 13 Digest 339, 376.

A meeting held without notice will be valid if all the members of the society are present and consent to the meeting being held.¹

Notice of a meeting must be given in a reasonable manner and at a reasonable time before the meeting is held. Where a particular method of giving notice is prescribed by the constitution of the society or the bye-laws, that method cannot be dispensed with and the acts transacted at meeting held in contravention of the rules can be considered as valid.²

The notice for a meeting must definitely state that it will be held and must contain the agenda or a statement of the facts which will be considered at the proposed meeting.³

No business other than the agenda notice of which has been given to the members can be transacted at a meeting, unless all the members are present and consent to the inclusion of any other business in the agenda.⁴

Quorum: In the absence of a special custom or of special provision the major part of members of an association must be present at the meeting and of that major part a majority must be in favour of the resolution.⁵

When a particular quorum is required for a meeting, acts done at a meeting in the absence of such meeting cannot be held valid.⁶

In considering whether the requisite number of members is present at the meeting, only those members must be included who are competent to take part in the meeting.⁷

Chairman: The chairman of the meeting must take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is regularly before the meeting. It is not within the power of the chairman to stop the meeting at his own will and pleasure. He cannot declare the meeting dissolved.⁸

Adjournment: When it is not possible to transact the whole business for which a meeting is called, the chairman has power to adjourn the meeting for the purpose of completing such business, and the adjourned meeting is to be considered as a part of the original meeting. It is not necessary to give notice of an adjourned meeting, but in that case no fresh business can be transacted.⁹

Voting: Votes at all meetings are taken by a show of hands and if necessary by a poll. Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up their hands.¹⁰

Unless expressly allowed by law or usage the chairman cannot have a casting vote.¹¹

1. (1724) 2 Ld Raym. 1358.
2. Halsbury, Vol. 8, p. 53.
3. Halsbury, Vol. 8, p. 54.
4. Digest 340, 383.
5. (1887) 21 Q B D 160.
6. 1866 L R 2 Exch. 158.
7. Halsbury, Vol. 8, p. 54.
8. Halsbury, Vol. 8, p. 58.
9. Halsbury, Vol. 8, p. 59.
10. (1789) 1 Hag. Con. 9.
11. Halsbury, Vol. 8, p. 60.

5. Property of society how to be vested : The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

COMMENTS

English Law : This section is based on Sec. 20 of the Literary and Scientific Institutions Act, which runs as follows :

"Where any institution shall be incorporated, and have no provision applicable to the personal property of such institution, and in all cases where the institution shall not be incorporated, the money, securities for money, goods, chattels, and personal effects belonging to the said institution, and not vested in trustees, shall be deemed to be vested for the time being in the governing body of such institution and in all such proceedings, civil and criminal, may be described as the monies, securities, goods, chattels, and effects of the governing body of such institution, by their proper title."

Scope : In all legal proceedings the moneys, securities, goods, chattels and effects belonging to a society and not vested in trustees, may be described as belonging to the governing body.¹

Under Sec. 5 the society registered under the Act shall have a name and its property, whether movable or immovable, shall, if not vested in trustees, be deemed to be vested in the governing body of the society. It has an existence distinct from that of its members and can hold property through trustees. Even if it is not a corporation in its full sense, it is certainly a legal person.²

The members of the society or the members of the governing body do not have any proprietary or beneficial interest in the property which the society holds. No interest in the property can be claimed by them in the event of dissolution. The Act does not create in the members any interest other than that of bare trustees. What all the members are entitled to is the right of management of the property of the society subject to certain conditions.³

A property which has vested in the trustees before registration of the society becomes as from the registration of the society a property belonging to the society and must be deemed to be society's property. A regular deed of conveyance in favour of the registered society is not necessary. As a matter of fact there is no transfer of ownership. That which belonged to an unregistered society continues after the change in status of that society on being registered as belonging to the registered society.⁴

Which differentiates a society registered under that Act from company incorporated under the Companies Act is that in the latter case the shareholders of the company hold the properties of the company as their own, whereas in the case of a society registered under the Societies Registration

1. Halsbury, Vol. 21, p. 10.
2. A I R 1950 All. 480.
3. A I R 1955 Andh. Pra. 773.
4. A I R 1953 Cal. 140.

Act the members of the societies or its governing body also not have any proprietary or beneficial interest in the property held by the society.¹

Under this Act the properties of the society continue to be vested in the trustees or the governing body irrespective of the fact that the members of the society for the time being are not the same as they were before nor will be the same thereafter.²

Held, on facts that property in possession of President was trust property and members of association were entitled to trace, trust property and recover it from person who was in its unlawful possession.³

Appointment of treasurer under the Charitable Endowments Act : The appointment of a treasurer under the Charitable Endowments Act does not result in directing the society registered under the Societies Registration Act of its property and in a corresponding vesting of the same in the treasurer. The vesting in the treasurer contemplated by the Charitable Endowments Act being only for certain specified purpose there is no transference of any property from the subject to the treasurer.⁴

Property : 'Property' includes movable and immovables—

Movable property : " 'Movable property' includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property."

The definition of this expression is also given in certain other statutes, viz., Section 3 (34) of the General Clauses Act (Act X of 1897) ; Section 3 of the Transfer of Property Act (Act IV of 1882) of Section 22 of the Penal Code. This expression is generally meant as all corporeal things of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

It may be noted that a contract to cut trees of all kinds excepting such trees as produce fruit or other forest produce for the manufacture of charcoal is not a contract for transfer of an interest in immovable property. Trees, other than fruit trees, or other forest produce are standing timber within the meaning of the Transfer of Property Act and are, consequently, not immovable property but only movable property.⁵

Status of societies registered under the Act—Right of registered educational society to enforce fundamental right : Where a petition is filed by an educational society, registered under the Act, claiming rights under Art. 19 of the Constitution, such a petition must be regarded as one made on behalf of the members of the society who are all citizens of India and it is, therefore, maintainable.⁶

Members of dissolved Union, in order to recover property of dissolved Union from its former President, forming themselves into association, registering it and authorising Secretary of association to recover property, **Held,** property in possession of President was trust property and members of association were entitled to trace trust property and recover it from person who was in its unlawful possession.⁷

1. A I R 1958 Andh. Pra. 773.
2. A I R 1958 Andh. Pra. 773.
3. A I R 1967 Mad. 260.
4. A I R 1958 Andh. Pra. 773.
5. A I R 1936 Bom. 167.
6. A I R 1968 Bom. 91.
7. A I R 1967 Mad. 260.

Society registered under—Status, character and rights of: Section 6 of the Societies Registration Act is an enabling provision and the society registered under the Act can sue and be sued in its own name. Once a society is registered, it enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued.¹

Registered society—Person serving under—Service conditions—If holds civil post: A registered society can sue and be sued in its own name can own its own property and can employ its own servants. Any person agreeing to serve under the society or in any of its institutions must be deemed to hold the post under the society and not to hold any civil post either under the Union or the State, even if its management is by the Government, and cannot get the protection of Art. 311 of the Constitution.²

Committee, acting on behalf of idol authorising its President, to file suit in name of idol—Appeal from decree in suit—Further resolution authorising filing of appeal—Necessity: Where a Committee, acting on behalf of an idol, authorises by a resolution, its President, to file a suit in the name of the idol and though no further resolution authorising filing of an appeal from the decree in that suit is passed by the Committee, such an appeal is filed but that appeal is rejected under Order 41, Rule 3, C.P. Code, that resolution authorising the filing of the suit is no authority to file an appeal. The rejection is thus not wrong.³

Immovable property: The Transfer of Property Act does not define 'immovable property'. The definition of this term, as given in the General Clauses Act, is that this term includes land benefits arising out of a land and things attached to the earth. Section 2(6) of the Registration Act defines 'immovable property' as follows:

"'Immovable property' includes land, building, hereditary allowances, rights to way, lights, ferries, fisheries or any other benefits to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass."

Trustee: Section 3 of the Trust Act, 1882 defines 'trust' as an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by, the owner, or declared or accepted by him for the benefit of another and the owner. The person in whom the confidence is reposed is called 'trustee'. The trust subjects the person by whom property is held to equitable duties to deal with property for the benefit of another person.⁴ The expression 'trustee', as used in the Societies Registration Act does not include a constructive trustee.⁵ The intention of the Act in using the phrase 'for the time being' in the present section is not ambiguous as this phrase explicitly means existing at the time of the passing of the Act or in the future.⁶

1. AIR 1970 Pat. 163.

3. (1969) 71 Punj. LR 302.

5. (1868) 3 Ch. App. 787.

2. 1969 Pat. LJR 438.

4. AIR 1959 Pb. 92.

6. 32 Digest 551.

Property belonging to a society: The fact that property is deemed to be vested in the trustees or governing body does not constitute any beneficial interest of the trustees or governing body in the property and the property must be deemed to be the property of the society.¹ It is the settled law that where there is a trust, the right of the trustee has to be determined in the light of the trust deed or trust scheme, and therefore, any act done by the trustee in contravention of the trust deed or trust scheme is invalid.²

Before registration the property vested in the trustees becomes the property belonging to the society as soon as it is registered under the Act. An incorporated association can hold property being a legal entity, and therefore, there is no transfer of ownership in the above case.³

It should also be noted that the Act does not create any beneficial interest in the property belonging to a society for its members other than that of bare trustees.⁴

Suit for possession of property by registered society through its president. President's election declared void. Election of P as new president. Plaintiff of suit amended within the limitation and allowed to be signed and verified by P. Defect in plaint held cured and that suit was maintainable.⁵

Held on facts that property in possession of president was trust property and members of association were entitled to trace trust property and recover it from person who was in its unlawful possession.⁶

The Act does not create in the members of the registered society any interest other than that of bare trustees. What all the members are entitled to is the right of management of the properties of the society subject to certain conditions.⁷

6. Suits by and against societies: Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

COMMENTS

Scope: The section is applicable to the societies registered under the Act. In the absence of registration under the Act, the society has no

1. AIR 1958 Cal. 140.

3. 41 PR (1897) 182.

5. AIR 1966 All. 570.

2. 1956 UPRD 7.

4. AIR 1958 MP 773.

6. AIR 1967 Mad. 260.

7. ILR (1971) 2 Delhi 515.

judicial status, and therefore, no suit can be instituted by or against it.¹ The society is an association of individuals which is neither a corporation nor a partnership, but which comes to exist with certain specified objects. If it is not registered as a society under the Act, it would have the character of a club which cannot sue or be sued except in the name of all its members or in the name of the secretary or other members of the executive body on their own behalf and on behalf of other members of the association. It would not be competent to a secretary or other members of the executive body of the club or association to sue or be sued alone in respect of matters in which the club or association is interested even though authority in that behalf has been conferred on them by all members of the club or association.²

Scope of section : Section 6 empowers a society to sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rule and regulation of the society, and in default of such determination in the name of such person as shall be appointed by the governing body for the occasion.³

Section 6 should be contained as permissive and the mode of institution of suit, prescribed therein, should be regarded as alternative to the normal mode.⁴

The proviso to Section 6 clearly envisages the possibility that if an application to the governing body some other officer or person be not nominated to be the defendant, the president, or chairman, or principal secretary, or the trustees thereof can be sued.⁵

Where on the resignation of the secretary of a society registered under this Act the managing committee authorised the additional secretary to do the acts on behalf of the society the requirement of Section 6 would be complied with. The authorisation would be covered by the last portion of this section.⁶

The second part of Section 6 authorises the governing body of the society to delegate the powers of representing the society in legal proceedings.⁷

A society not registered under the Act would have the characteristic of an association which cannot sue or be sued except in the name of all the members of the association. Once the society is registered under the Act it enjoys the status of a legal entity apart from the members constituting the same and is capable of suing and be sued.⁸

Society registered under the Act is a corporation or quasi-corporation capable of entering into a contract. Registration confers a legal personality and the contract is capable of being enforced against it.⁹

In order to redress a wrong done to the company or to recover monies or damages alleged to be done to the company the action should be brought *prima facie* by the company itself.¹⁰

1. A I R 1934 Nag. 207.

3. A I R 1960 Andh. Pra. 605.

5. A I R 1960 Andh. Pra. 605.

7. A I R 1953 Cal. 140.

9. A I R 1946 Bom. 516.

2. A I R 1946 Bom. 516.

4. A I R 1959 Cal. 361.

6. A I R 1950 All. 447.

8. A I R 1958 Andh. Pra. 773.

10. A I R 1941 Bom. 312.

The principles governing relations of members of incorporated companies are applicable to societies registered under the Societies Registration Act¹

Suits by minority of members : The principles governing the relations of members of joint stock companies would apply to the case of society registered under the Societies Registration Act ; the opinion and acts of the majority would be binding on the whole society especially when the rules of the society are to that effect. The minority have no right of action against the majority in respect of proceedings of which they do not approve where the act complained of is an act which the majority are entitled to do.² A majority, however large, cannot bind a dissentient minority, however small, to do that which is not authorized by the constitution of the society. The minority feeling aggrieved can sue the society even without obtaining the sanction and consent of the society.³ The minority may come to the Court when the majority are abusing their powers and are depriving the minority of their rights.⁴ The power conferred on the majority must, however be exercised *bona fide* and the Court interferes only to prevent unfairness or oppression. The supremacy of the majority is subject to three exceptions : (1) where the acts complained of are *ultra vires* the society ; (2) where the act complained of are a fraud on the minority ; and (3) where there is absolute necessity to waive the rule in order that there may be no denial of justice.⁵

Action by minority for fraud of company against majority of shareholders can be brought in their own names. They are not entitled to greater relief than company if it were plaintiff.⁶

Where a suit is brought by some members of the society on behalf of themselves and all the members of the society against the president of the society as representing the society, the suit cannot be objected to on the ground that the society is the plaintiff as well as the defendant.⁷ If the governing body of a society refuse to allow proceedings to be instituted in its name individual members may, at their own risk, make use of its name.⁸

Suit by unregistered tribunal/association : The necessary implicating Section 6 is that no suit can be filed in the name of an unregistered association. But this does not mean that an unregistered association is in that redress. A wrong done to an association is a wrong to all the members of that association and therefore the cause of action for the redress of that wrong vests in all the members of the association and as no member of an unregistered association can represent another member it would follow that a suit seeking redress on behalf of an association would have to be filed by all the members of that association. However if no suit could be filed in respect of the rights of an association unless every member of that association was impleaded in the suit it would be

1. A I R 1946 Bom. 516.

3. 1902 A C 83.

5. A I R 1946 Bom. 516.

7. A I R 1946 Bom. 516.

2. Digest 613, 4079.

4. (1875) 1 Ch. D. 13.

6. A I R 1941 Bom. 312.

8. Halsbury, Vol. 8, p. 116.

difficult to enforce such rights. Therefore in order to remove this difficulty the legislature has enacted. (Order 1, rule 8 of the Civil Procedure Code, 1908). This rule states as follows :

"Where there are numerous persons having the same interest in one suit, one or more of such person may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of, or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or where from the number of persons or any other course, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct".¹

In all corporations and companies incorporated under the Companies Act, the normal position is that the internal affairs of the corporations or Companies are managed by a vote of the majority ; and members join the corporations or the companies with full knowledge that the majority of the members are entitled to exercise the powers and control the operations generally. The Court will not interfere with the internal management of the Companies acting within their powers and in fact has no jurisdiction to do so, and further in order to redress a wrong done to a Company or to recover money or damages alleged to be due to a Company the action should *prima facie* be brought by the Company itself.

This supremacy of the majority is, however, subject to the following exceptions, viz., (1) where the act complained of is *ultra vires* the Company ; (2) where the act complained of is a fraud on the minority ; and (3) where there is absolute necessity to waive the rule in order that there may be no denial of justice.

These principles which govern the relations of the members of Joint Stock Companies incorporated under the Companies Act are also applicable in the case of a society registered under the Societies Registration Act and would govern the relations between the members of the society *inter se*.

Where, therefore, the acts complained of fall within the exceptions, the members of a registered society who are in the minority would be entitled to institute a suit on behalf of themselves and all other members of the society making the society and the president and members of the managing committee of the society party defendants to the suit and it would not be necessary to obtain the previous sanction and consent of the society for the institution thereof, simply because the control of the affairs of the society is in the hands of the majority whose acts are complained of and it would be futile to attempt to obtain the sanction and consent of the society for the institution of the suit, it being an absolute certainty that no such sanction or consent would ever be available to the plaintiffs.²

Society registered under Act—Society is legal entity capable of suing and being sued in its own name : Once a society is registered with the Registrar of Joint Stock Companies by the filling of the memorandum and certified copy of the rules and regulations thereof, with the Registrar and the Registrar has certified under his hand that the

1. P L D 1969 Kar. 692.

2. A I R 1946 Bom. 516.

society is registered under the Act, the society enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued. In spite of the provisions contained in Secs. 6, 7 and 8, it is competent to the society, to sue or be sued in the name of the society, to be sued in its registered name. These provisions are not inconsistent with the use of the registered name of the society in connection with legal proceedings. The use of the name is not compulsory but it is at least permissive.

Where, therefore, a suit is brought by some members of the society on behalf of themselves and all the members of the society against the president of the society as representing the society the suit cannot be objected to on the ground that the society is the plaintiff as well as the defendant.¹

Society registered, status of—Suit by member of society on behalf of himself and other members against members of Managing Committee of Society—Maintainability : The position of a society registered under the Societies Registration Act is more like that of a club or a joint stock company. In order to redress a wrong done to the Company or to recover moneys or damages alleged to be due to the company, the action should *prima facie* be brought by the Company itself. But where the persons against whom the relief is sought themselves hold and control the majority of the shares in the Company, and will not permit an action to be brought in the name of the Company, the Courts allow the share-holders complaining to bring an action in their own names. This, however, is a mere matter of procedure in order to give a remedy for a wrong which would otherwise escape redress, and in such an action the plaintiff cannot have a larger right to relief than the Company itself would have if it were plaintiff, and cannot complain of acts which are valid if down with the approval of the majority of the share-holders, or are capable of being confirmed by the majority. The cases in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the Company.

A society was founded and registered under the Societies Registration Act mainly to promote the education of the boys and girls of Southern India and with that object in view it thought of erecting a building to house the school. Not having sufficient funds on hand, schemes were suggested to borrow money on issue of debentures. The scheme, however, failed. On 26th July, 1936, a general meeting of the society was called at which a managing committee was elected. The next general meeting of the society was called on 4th December, 1938. At that meeting eight persons were elected to the managing committee. They co-opted one member in April, 1939. The managing committee, on a consideration of the situation, resolved to borrow money from certain other parties and entered into an agreement with them for that purpose. A general meeting of the members held on 15th October, 1939, validated the election of the managing committee which had been functioning till then and their acts. The plaintiff who was a member of the society then filed a suit on behalf of him. If and the other members of the society except the defendants, who were the nine members whose appointment to the managing committee was confirmed by the general meeting held on

1. A I R 1946 Bom. 516.

15th October, 1939, for a declaration that the loans raised by the defendants were unauthorised and prayed that a managing committee be constituted under the direction of the Court. It was held that :-

"as the position of the members of the society was similar to that of the share-holders of the company and as the acts of the defendants which were challenged were in respect of the society, it was necessary that the society should be a party to this litigation. It was not competent to the plaintiff either alone or representing himself and the other members of the society other than the defendants to bring a suit. As the acts of the defendants which were challenged were only in respect of the alleged wrong done to the society as a body and not in respect of infringement of the individual right of the plaintiff, in the absence of the society as a party to the litigation, the suit as framed was not maintainable and the Court had no jurisdiction to try the suit in the absence of the society".¹

English Law : This section is based on Sec. 21 of the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112) which reads as follows :-

Any institution incorporated which shall not be entitled to sue and be sued by any corporate name, and every institution not incorporated, may sue or be sued in the name of the president, chairman, principal secretary or clerk, as shall be determined by the rules and regulations of the institution, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion ; provided that it shall be competent for any person having a claim or demand against the institution to sue the president or chairman thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

It will be seen that the language of the corresponding section in the English Act is identical with that of the present section.

Suits by or against a society : A society can sue or be sued in the name of the president, chairman, principal secretary, or clerk, as determined by the rules of the society, or if the rules are silent, in the name of the person appointed for this purpose by the governing body. Any person having claim or demand against the society may sue the president or chairman, if upon application to the governing body some other officer or person is not nominated to be the defendant.²

When it is competent for a corporation as such to commence legal proceedings such proceedings cannot be commenced by one or more of its individual members.³ A suit by or against an unregistered society must be brought in the names of, or against all the members of the society.⁴ Thus an unregistered association cannot sue in the name of its secretary.⁵ A suit brought in the names of only some of the members of such a society cannot be maintained.⁶

1. A I R 1941 Bom. 312.

2. Halsbury, Vol. 21, p. 11.

3. Halsbury, Vol. 8, p. 115.

4. A I R 1935 All. 872.

5. A I R 1929 Cal. 4454.

6. A I R 1949 E P 233.

Once a society is registered with the Registrar of Joint Stock Companies by the filing of the memorandum and certified copy of the rules and regulations thereof with the Registrar and the Registrar has certified under his hand that the society is registered under the Act, the society enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued. Society can sue or be sued in its registered name. The use of the registered name of the society is not compulsory but is permissive.¹

Where on the resignation of the secretary of a society the Managing Committee, by a resolution, authorised the additional secretary to file a revision petition in the High Court, it was held that the provisions of Section 6 were complied with and that the revision must be considered to have been properly filed.²

In a suit against a society registered under this Act the president and honorary secretary were impleaded as party defendants. The person appointed for being such on behalf of the society refused to act and no other nomination was made. The Court held that since no effective nomination was made by the society the suit was validly instituted against the president and secretary.³

A society was formed in a country town for providing Sunday evening lectures on art, science, literature and sociology to which the public were admitted on payment of small sums. The lectures were not, however, instituted for profit. A hall belonging to a limited company in liquidation was hired, and meetings were held there on Sunday evenings, at each of which some leading inhabitant acted as chairman and introduced the lecturer, but having done so retired from the platform and took his place amongst the audience. Actions for penalties were brought against gentlemen who had acted as chairmen at two of the meetings. *Held*, that the chairmen were not liable, as they were not "persons managing or conducting the entertainment" within the Act.⁴

The position of a society registered under the Act is more like that of a club or joint stock company. The position of the members of the society is similar to that of the shareholders of a company. In order to redress a wrong done to the company the action should *prima facie* be brought by the company itself and it is not competent to a member of the company, either alone or representing himself and the other members of the company, to bring a suit. The only grievance in respect of the disputed acts can be of the company. These cardinal principles have been laid down in certain leading English cases.⁵ But where the persons against whom the relief is sought themselves hold and control the majority of the shares in the company, and will not permit an action to be brought in the name of the company, the Court will allow the shareholders complaining to bring an action in their own names. This, however, is mere matter of procedure in order to give a remedy to a wrong which would otherwise escape redress, and it is obvious that in such an action the plaintiff cannot have larger right to relief than the company itself would have if it were plaintiff, and cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are

1. A I R 1946 Bom. 516.

2. A I R 1950 All. 446.

3. A I R 1932 Cal. 800.

4. (1895) 1 Q B 315.

5. 62 R R 185.

capable of being confirmed by the majority. The case in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company.¹

A society registered under the Societies Registration Act is a legal entity capable to sue and be sued in its corporate capacity.² The registration confers on the society a legal personality and consequently any contract entered into by it would be legally enforceable, unless it was vitiated in law for some or the other reason.³ It should, however, be noted that the society registered under the Act is quite distinct from a partnership. It has nothing in common with a partnership. A society is a collection of individuals united into one body under a special denomination having perpetual succession under an artificial form and vested with the powers of taking and granting properties, contracting obligations and of suing and being sued.⁴

Rules authorising to sue only in the name of President. Governing body of society disagreeing with University resolution that termination of teachers by society was not in order. President taking contrary view. Writ petition challenging University resolution filed in the name of society represented by treasurer. Petition held was maintainable.⁵

The Act lays down a particular procedure for the suits by or against the registered societies, viz., every society registered under the Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body of the society. The person who has any claim or demand against the society may sue in the name of its president, chairman, principal secretary or trustees, if a particular person is not nominated by the governing body of the society. A registered society has also a right to sue and to be sued itself, and in such cases the question as to whether the rules empowered the society to sue or to be sued for and on behalf of the society need not be gone into.⁶ Thus, where a suit is filed by some members of the society against the other members of the society, the suit does not fail on the ground that the society itself has been impleaded as the plaintiff as well as the defendant.⁷

Suits by and against unregistered societies: An unregistered society has no legal personality, and hence, it cannot sue and be sued in its name. However, the members of the executive committee of an unregistered society may bring an action on behalf of the society, and if any member refuses to sign the plaint, he may be impleaded as defendant.⁸

Where a petition is filed by an educational society, registered under the Act, claiming rights under Art. 19 of the Constitution, such a petition must be regarded as one made on behalf of the members of the society who are all citizens of the country and it is, therefore, maintainable.⁹

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| 1. 1902 A C 83. | 2. A I R 1940 Mad. 949. |
| 3. A I R 1954 M P 172. | 4. 1743 Vol. 1, p. 13. |
| 5. (1875) 1 Mad. L J 23. | 6. 1957 A L J 970. |
| 7. A I R 1946 Bom. 516. | 8. 1901 A C 426. |
| 9. A I R 1968 Bom. 91 (94). | |

Members of dissolved union, in order to recover property of dissolved union from its former president, forming themselves into association, registering it and authorising secretary of the association to recover property. *Held*, property in possession of president was trust property and members of association were entitled to trace trust property and recover it from person who was in its unlawful possession.¹

Section 6 of the Societies Registration Act is an enabling provision and the Society registered under the Act can sue and be sued in its own name. Once a society is registered, it enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued.²

A registered society can sue and be sued in its own name can own its own property and can employ its own servants. Any person agreeing to serve under the society or in any of its institutions must be deemed to hold the post under the society and not to hold any civil post either under the Union or the State, even if its management is by the Government, and cannot get the protection of Art. 311 of the Constitution.³

Where a Committee, acting on behalf of an idol, authorised by a resolution, its President, to file a suit in the name of the idol and though no further resolution authorising of filing an appeal from the decree in that suit is passed by the Committee, such an appeal is filed but that appeal is rejected under Order 41, Rule 3, C. P. Code, that resolution authorising the filing of the suit is no authority to file an appeal. The rejection is thus not wrong.⁴

Treasurer having concurrent powers with the Secretary could present the application for release of accommodation: Where under the Memorandum of Association of the Society the Treasurer and the Secretary had concurrent powers the petition for the release of accommodation filed by the Treasurer was held to be competent.⁵ Under Section 6 of the Societies Registration Act a society might sue or be sued among others in the name of the Secretary as determined by the rules and regulations of the Society, and in the absence of such rules, in the name of such person as shall be appointed by the governing body for the occasion.⁶

Suit against Registered Association: Plaintiff claiming enforcement of his personal right to live in association's premises. No claim to enforce his right as a life member. Association held was distinct legal entity apart from its members. Suit held was competent.⁸

Court can interfere in the internal management of society when act complained of is *ultra vires* the society or when personal right of a member is violated.⁷

Appeal filed by Manager of a Registered Club—Maintainability: Section 6 empowers a registered society to sue or be sued in the name of its President, Chairman or principal Secretary, etc., as shall be

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| 1. A I R 1967 Mad. 260. | 2. A I R 1970 Pat. 163. |
| 3. A I R 1970 Pat. 183. | 4. (1969) 71 Punj. L R 302. |
| 5. 1978 (UP) R C C 355. | 6. I L R (1978) 1 Cal. 57. |
| 7. I L R (1976) 1 Cal. 57. | |

determined by its rules and regulations. Where there is no such provision in the Rules or Regulations, a resolution empowering or authorising some one in this regard will have to be passed by the Governing Body of the Society.

In the absence of any rules and regulations or of a resolution of its Governing Body authorising the Manager to file the appeal, the appeal filed by the Manager is incompetent.¹

Suits by and against Societies: In the absence of authority conferred on office-bearers of a Society for instituting suit or further pursuing it, institution of appeal from order and decree of trial Judge would not be proper.²

Provisions whether mandatory: The provisions of the Act do not indicate that the use of the name of a registered society in legal proceedings is compulsory. It is rather permissive on the ground of convenience. However, it is the intention of the legislature that for all purposes including the legal proceedings the registered name of the society should be used to denote the union as an incorporated society. It has been held that the provisions contained in Section 6 of the Act, for institution of suits by or against the society are not mandatory and do not militate against a society registered under the Act suing or being sued in its registered name, and therefore, since the Act does not bar to institute suits by or against the society in its registered name, a rule framed by the society providing the institution of suits by or against it in its corporate name cannot be held as *ultra vires* of the Act.³

Society registered under particular name can validly adopt different name for institution of suit by and against it. Suit instituted in that different name is maintainable provided that it has been instituted by a person empowered to do so.⁴

Delegation of powers to institute and defend suit: Section 6 of the Act authorises the governing body to appoint the delegate for the purpose of representing the society in the absence of any such delegation made in the rules and regulations of the society. The governing body is competent to delegate such powers to the office-bearers or trustees or some other person and when a delegation is duly made to some person to institute a suit or to defend a suit, the suit or the defence, as the case may be, is legally maintainable.⁵ The governing body is authorised to appoint a person for the purpose and the society may sue or be sued in the name of such person so appointed.⁶

Error in description of representation: Where the question is whether a suit brought against a society is vitiated because the society as such is that described as the defendant but only its president or chairman or trustee it has been held that when the plaint makes it clear that the suit is against the society, the society cannot contend that the suit is vitiated in law.⁷ Also the omission to describe the society as the defendant in a decree does not vitiate the decree.⁸

1. A I R 1974 Punj. 256.

3. A I R 1954 Cut. 361.

5. A I R 1953 Cal. 140.

7. A I R 1926 Pat. 40.

2. 1971 Cut. L J 47 (D B) (Pun.).

4. A I R 1986 All. 570.

6. A I R 1950 All. 447.

8. A I R 1957 Trav. Cochin. 259.

Wrong done to society: In order to redress a wrong done to the society, it is the general rule that the action should be brought by the society itself.¹ There is, however, an exception to this general rule. Where the person against whom the action is brought and relief is sought himself holds the management of the society and as such will not permit an action to be brought in the name of the society, the complaining members may bring an action in their own name.² However, as the position of the members of the society registered under the Societies Registration Act is similar to that of the shareholders of the company registered under the Companies Act and as the acts of the defendant which are challenged are in respect of the society it is necessary that the society should be a party to the litigation. It is not competent to plaintiff either alone or representing himself and the other members of the society other than the defendants to bring a suit.³

7. Suits not to abate: No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

COMMENTS

Scope: Section 7 is only a corollary, though a necessary corollary to Section 6, providing for the continuation the suit in certain contingencies and prescribing the mode therefor.⁴

Neither the provisions contained in Section 7 nor those contained in Section 6 militate against a registered society suing or being sued in its registered name. The provisions of these sections are not mandatory.⁵

This section is based on Section 22 of the Literary and Scientific Institutions Act the language of which is identical with that of the present section. Death or retirement from office of a plaintiff or defendant does not cause the abatement or discontinuance of civil proceedings brought by or against a society. A suit by or against a society will not become defective by reason of the death of one of its members.⁶

Provisions whether mandatory: The provisions contained in this section are not mandatory to the extent as they do not militate against a registered society suing or being sued in its registered name.⁷

Perpetual existence of society: A registered society becomes a body corporate with permanent existence and perpetual succession. Notwithstanding that the members of the society or its governing body fluctuate from time to time, the existence and identity of the society remains perpetual and continuous under the provisions made in the Societies Registration Act.⁸ The present section makes it clear that the

1. A I R 1941 Bom. 312.

3. A I R 1941 Bom. 312.

5. A I R 1959 Cal. 361.

7. 48 Bom. L R 34.

2. I L R 1941 Bom. 497.

4. A I R 1959 Cal. 361.

6. 13 Digest 414, 1339.

8. A I R 1958 A P 773.

death or retirement from office of a plaintiff or defendant does not cause the abatement or discontinuance of civil proceedings brought by or against a society. The proceedings are continued in the name of or against the successor of such person.

Civil Court : Courts constituted for deciding purely civil disputes between persons seeking their civil rights are called as civil Courts. This term, however, does not include the High Court.¹ But this term comprises the revenue Courts deciding rent suits and executing rent decrees. A Court must derive its powers from a statute and discharge its duties in a judicial manner. Thus an election tribunal constituted under Section 22 of the Municipalities Act, being charged with a duty to decide disputes in a judicial manner, is a Court. Parties to an election petition are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. The Tribunal, after concluding the enquiry declares the rights of parties in a definitive judgment and the proceedings during the inquiry approximate in all essential matters to proceedings in a civil Court.²

Suits and proceedings : By the expression 'suits and proceedings', appearing in this section, is meant the suits and proceedings relating to the disputes of civil rights. It is very difficult to give a comprehensive definition of 'civil rights'. They are not limited to common law rights only but would include *inter alia* any right to property, reputation, status, and office of a person though these may be creatures of statutes.³ The word 'civil' relates to private rights and remedies given to individuals or corporations as members of the community in contradistinction to those which are public and relates to Government. An action, which has for its objects, the recovery of private or civil rights, or compensation for their infraction is necessarily a suit or civil proceeding.⁴ Precisely speaking, a proceeding taken for the enforcement of civil rights is a civil proceeding, even if the jurisdiction of the Court, which has been invoked, happens to be special or extraordinary.⁵ The Supreme Court, in a leading case, has laid down a test to determine as to what is a civil proceeding. It is observed that the constitution nowhere defines what 'civil proceedings' are and therefore, the Court must examine the nature of the proceeding to find out whether it can be called a civil proceeding or not. If the proceeding is in aid of establishing a civil right or for disputing one it would be a civil proceeding. The test would be whether under the provisions of any statute the right claimed or denied could be established in a civil Court. Broadly speaking, if the proceedings taken establish or negative a man's office or would affect his right to property of any kind it will be a civil proceeding.⁶

Survival of cause of action : It is the settled law that a suit or proceeding necessarily abates if the cause of action does not survive to the surviving successor. The cause of action is something much wider in its scope than the mere date on which the cause of action arises. As is well-known, the cause of action is the whole bundle of facts upon the basis of which the plaintiff alleges the infringement of a right and seeks a

1. A I R 1941 Cal. 529.

2. A I R 1963 All. 395.

3. A I R 1963 Cal. 364.

4. A I R 1959 Pb. 58.

5. A I R 1959 Pb. 59.

6. A I R 1963 Cal. 364.

remedy. Where the defendant sets up the bar of Order XXI, Rule 9 of the Code of Civil Procedure, 1908 (V of 1908) under the relevant provisions of the Qanun-e-Shahadat Order, 1984 regarding the burden of proof, the onus lies upon the defendant of establishing the existence of the bar by showing that the cause of action is the same in both sets of suits.¹ All persons on whom the cause of action devolves can continue the suit or proceeding.² The substitution of successor should normally take place within 90 days of the predecessor's death or retirement in accordance with the provisions contained in Order XXII of the Code of Civil Procedure, 1908 (V of 1908). The Court has, however, jurisdiction to extend the benefit of Section 5 of the Limitation Act if it is satisfied that there are sufficient grounds for doing so.³ If the cause of action survives there is no reason why a suit or proceeding should not proceed against some only of the successors of a deceased person who is impleaded as defendant. The acid test for determining as to whether on the bringing on record of some only of the successors of a deceased defendant the suit abates or not is as to whether a separate suit would lie against them or not. If the persons brought on record as the successors do not represent a part of the deceased's estate a separate suit would lie against them.⁴

8. Enforcement of judgment against society : If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having used or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

COMMENTS

Scope : This section is based on Section 23 of the Literary and Scientific Institutions Act. Judgments recovered against the nominees of a society are enforceable against the property of the society and not against the properties of the nominees.

Any person having a claim against the society must look to its property and not that of its members for the satisfaction of his dues. The society is legal entity and is capable of being sued.⁵

The provisions as to enforcement of judgment against society in Section 8 are not inconsistent with the user of the registered name of the society in legal proceedings.⁶

Nominees' liability : The liability of a person nominated by a registered society for the purpose of suing and being sued on behalf of

1. 1957 A L J 230.

2. 1960 A L J (Rev.) 61.

3. 1956 U P R D 68.

4. A I R 1963 Him. Pra. 25.

5. A I R 1950 All. 480.

6. A I R 1946 Bom. 516.

the society is limited to the property of the society. A judgment recovered against such a person who has acted on behalf of a society is enforceable against the property of the society and not against the property in which such a person has a personal interest. The word "interest" has a very wide import and should be construed very liberally so that any right which a person may have over a property may not escape from consideration.¹

Execution of judgment : A judgment recovered against the society may be put on execution by an application setting forth the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only but such judgment shall be executed only against the property of the society. The personal property of the person or officer nominated by the society to sue and to be sued cannot be attached in the execution of a decree passed against the society. In the case of such attachment such a person or officer may put his claim by means of an objection as contemplated by Order XXI, Rule 58 of the Code of Civil Procedure, V of 1908, and if such objection fails or has not been brought, a regular suit for setting aside the attachment or sale and recovering the property is maintainable under Order XXI, Rule 63. So long as the property does not vest in the auction purchaser, which does not take place till the sale is confirmed by the executing Court the executing Court has jurisdiction to entertain a claim and make an investigation under Order XXI, Rule 58, despite the fact that execution sale has taken place. The Court may, however, dismiss the claim or objection summarily on the ground that it is filed belatedly.²

Legal character of a Society registered under the Act enjoys the status of legal entity apart from the members constituting it. It can sue and be sued.³

Since a society is not a firm, the liability of the members of a society and the liability of the partners of a firm differ from each other. The members of a society are not personally liable and a decree against the society can be executed only against the property of the society and not against the personal property of its members. In the case of a firm a decree against it can be executed against the property of the firm and also against any person who has appeared in the suit individually in his own name and has been served with a notice under Rule 3 or 7 of Order XXX of the C. P. C. and again, also against a person who has been adjudged or admitted as a partner of the firm and who has been served with a notice individually but has failed to appear.⁴

It may be noted that in the execution proceedings where a liability is disputed by the garnishee such issue is to be determined by the executing Court and the decree-holder cannot be directed to file a separate suit to get the point raised by the garnishee decided.⁵

9. Recovery of penalty accruing under bye-law : Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a

1. A I R 1959 Pat. 50.

2. A I R 1963 Rajasthan 144.

3. A I R 1970 Pat. 163.

4. A I R 1960 S C 388.

5. A I R 1960 All. 547.

general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary). any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

COMMENTS

Scope : This section is based on Section 24 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. Ch 112), which, except for a few changes is almost identical with the present section.

This section provides for the recovery in a Court of Law of pecuniary penalty for the breach of a bye-law duly made in accordance with the rules and regulations of the society or, if the rules do not provide for the making of bye-laws, any bye-law made at a general meeting by the concurrent votes of three-fifths of the members present. The penalty imposed by a society must be imposed in the manner prescribed by the Act and not otherwise in order that it may be recoverable by Court.¹ A corporation can inflict penalties to enforce bye-laws.²

A bye-law may direct that a reasonable penalty may be enforced by distress or action for debt, but not without previous demand and refusal to pay.³

Bye-laws : All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "bye-laws", whether they be valid or invalid in point of law, but the term may also be applied to regulations binding only on the corporation, its officers and servants.⁴

Any pensionary liability imposed by a bye-law for the breach of that bye-law may be recovered by the society from a member under this section.⁵

Every Corporation has the power to make bye-laws relative to the purposes for which it is constituted.⁶

In any institution the governing body, if not otherwise legally empowered to do so, may at a meeting specially convened according to its regulations make bye-laws to regulate the institution, its members, and officers, and to further its objects, and impose a reasonable penalty for breach of any bye-law.⁷

Where the constitution gives power to make bye-laws for the maintenance and government of the Corporation, such bye-laws may be made at any time and from time to time after incorporation.⁸

1. A I R 1925 Oudh 107.

2. 13 Digest 325.

3. 13 Digest 334, 729.

4. Halsbury, Vol. 8, p. 43.

5. A I R 1950 All. 480.

6. Halsbury, Vol. 8, p. 43.

7. Halsbury, Vol. 21, p. 8.

8. Halsbury, Vol. 8, p. 44.

Where the constitution of a Corporation provides for the making of bye-laws according to a certain form, and in a particular manner, the provisions of the constitution must be followed.¹

A bye-law is always deemed to have been made with the knowledge and consent of every member of the Corporation. No member can plead ignorance of a bye-law, or allege that the Corporation has no power to make or enforce a bye-law which was in existence at the time when he became a member.²

While testing the validity of a bye-law regard must be had to the intention of the founder or creating authority as expressed in the constitution of the Corporation.³

Bye-laws made by a society cannot override the provisions of the Act.⁴ When once registration has been effected, the provisions of the Act will apply and such bye-laws as are inconsistent with them will become inoperative.⁵ Any rule of a society carried on for the equal benefit of all the subscribers, which gives undue advantage to a class of subscribers, is *ultra vires* and open to correction. An officer of a society who retains its funds contrary to the rules will be restrained by the Court.⁶

Books of a society are sufficient evidence of the existence of bye-laws entered in them, even as against strangers. A printed copy of the bye-laws authenticated by an officer of the society is *prima facie* evidence that the bye-law is in force, and was duly made and published.⁷

When a society sues a non-member upon the basis of a bye-law, it cannot refuse to allow him inspection of the bye-law.⁸

Bye-laws are usually framed by Corporations under their inherent powers in order to carry out the purposes of the Corporation or they are framed by public authorities set up by Parliament, and as it is left to the Corporations or the public authorities to frame these bye-laws and carry out their purposes, the Courts have certain amount of control over the bye-laws and can consider their reasonableness. Therefore, a bye-law can be challenged in a Court on account of its being unreasonable.⁹

The society is empowered to frame bye-laws for imposing penalty for breach of any rule or bye-law made by it in accordance with its rules and regulations. However, no special legal force is attached to rules made by the society merely because of the fact that the rules have been filed with the registering authority at the time of registration. A bye-law made by the society before registration which is inconsistent with the Act ceases to be operative as soon as the society is registered.¹⁰ Again, the bye-law made by the society for imposing penalty must be framed in accordance with the rules made according to the Act and not otherwise. If a bye-law has not been framed as such the penalty imposed by the societies in accordance with it cannot be recoverable in Court.¹¹

1. Halsbury, Vol. 8, p. 45.

2. (1845) 14 M & W 624.

3. 41 Digest 960, 8542.

4. 6 T L R 83.

5. A I R 1939 All. 557.

6. (1845) 1 Holt, Esq. 99.

7. (1905) 1 K B 534.

8. Halsbury, Vol. 8, p. 50.

9. (1951) 54 B L R 285.

10. 1939 A L J 757.

11. A I R 1925 Oudh 107.

Jurisdiction of Court : Under the Act an action for recovery of penalty imposed by a society is maintainable in a Court under whose jurisdiction the defendant resides or the society is situate. The objection as to jurisdiction must be made in the Court of first instance at the earliest possible opportunity. It is provided that "no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."¹ The Board of Revenue at Allahabad has held that objections as to jurisdiction can be raised at any stage even for the first time.²

When one of the parties to a contract signs an order form printed by the other party containing the words "subject to Madras jurisdiction" and sends the order form to the other party, it must be assumed that party agreed that 'Madras' is the place for the settlement of dispute. It is not open to that party to question the jurisdiction of Madras Court.³

The conflict of jurisdiction between the Civil Court and the revenue has to be determined on the basis of the allegations in the plaint and the relief claimed therein.⁴

Mode of imposing penalty by society must be in accordance with the rules made according to law : The penalty imposed by society must be imposed in the manner prescribed by the Act, and not otherwise in order that it may be recoverable in Court ; in other words, it must be for breach of bye-law duly made in accordance with the rules and regulations of the society or if the rules do not provide for making bye-laws then in accordance with a bye-law made at a general meeting by the concurrent votes of three-fifths of the present members. No special legal force attaches to rules framed by society merely because of the fact that the rules were framed before registration were lodged after registration with the Registrar under Section 18.⁵

10. Members liable to be sued as strangers : Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged : But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the

1. Sec. 21 of the CPC (V of 1908). 2. 1957 A W R (Rev.) 217.

3. A I R 1963 Guj. 148.

4. 1960 A L J 479.

5. A I R 1925 Oudh 137.

latter case shall have process against the property of the said society in the manner above described.

COMMENTS

Scope : This section is based on Section 25 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., C 112) and the language of the English Act, is identical.

Under this section any member who is *inter alia*, in arrears with his subscription, or who is wrongfully in possession of the property of the society may be sued by the society as though he were a stranger.¹

Under this section, a member is liable to be sued by a society (1) if his subscription is in arrear, (2) for possessing himself of and detaining property belonging to the society contrary to the rules, and (3) for injuring or destroying property belonging to the society. If the action against the member fails he can recover his costs from the officer of the institution suing him or from the institution. In case of his proceeding against the institution he can proceed against the property of the institution.²

Arrear : The term 'arrear' means money not paid on due date and falls due against a person. The existence of some default on the part of the person liable for payment is an essential characteristic of 'arrears' and must be taken into account.³ The arrears, even if decreed, do not cease to be arrears.⁴ The term 'arrear' may also include time-barred dues.⁵

Liability of defaulting member analysed : A person who is in arrear of a subscription which according to the rules of the society, he is bound to pay, or has possessed, detained, injured or destroyed any property of the society contrary to such rules, is said to be a defaulting member. He may be sued for recovery of money due against him as an arrear of subscription of the society or for his tortious acts resulting in the damage to the property of the society as a stranger. If, however, the action against him fails and he is adjudged his costs, he may either proceed against the officer in whose name the proceedings were taken or against the property of the society for recovering his costs. The officer in whose name the proceedings are taken on behalf of the society is deemed to be an agent of the society. The term 'agent' has been defined under Section 182 of the Contract Act, 1872 : "An agent is a person employed to do any act for another or to represent in dealings with third persons." The authority of an agent may be expressed when it is given by words spoken or written, and it is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written or the ordinary course of dealing, may be accounted circumstances of the case.⁶ The relationship between a principal and an agent necessarily implies privity and in its absence no such relationship exists.⁷ It is the well-settled law that the principal is liable for the tortious acts committed by his agent on the principle of vicarious liability.⁸ The

1. A I R 1950 All. 480.

3. 6 C L J 273.

5. A I R 1936 Mad. 116.

7. A I R 1959 Pb. 92.

2. Halsbury, Vol. 21, p. 9.

4. A I R 1949 All. 537.

6. See Sections 186 and 187 of the Contract Act, 1872.

8. (1954) 1 All. L R 909 (H L).

present section of the Societies Registration Act recognizes the principle of vicarious liability and allows the person who is adjudged his costs in litigation, to proceed against the property of the society notwithstanding that the litigation took place in the name of any of its officers.

11. Members guilty of offences punishable as strangers : Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

COMMENTS

Scope : This section is based on Section 26 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., C. 112) and provides for punishment of members for offences under the criminal law whereas Section 10 provides for contravening the Civil Law.

Any member who steals, embezzles, or wilfully damages any property of the society shall be subject to the same prosecution and is liable to be punished in like manner as any person who is not a member.¹

A member of an institution can be prosecuted if he wilfully and maliciously destroys or injures the property of the institution or causes loss to the institution, just as a non-member can be prosecuted.

Wilfully : 'Wilfully' means intentionally or deliberately. Generally the word 'wilful' as used in Courts of law, implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows, what he is doing, and intends to do what he is doing and is a free agent. A default or negligence will be considered as wilful, when under ordinary circumstances the person making the default or committing negligence would have refrained from making or committing the same. Their Lordships of the Privy Council have held that the expression 'wilfully' means that the acts is done deliberately and intentionally and not by accident or inadvertence, but so, that the mind of the person who does the act goes with it.² The word 'wilful' has been used in Section 3 of the Transfer of Property Act in connection with the definition of notice. The words "wilful abstention from inquiry or search" were taken to mean such abstention from inquiry or search as would show want of *bona fides*.³ It was held that the word 'wilful' made it clear that the abstention from inquiry should be designed and due to a desire to avoid an inquiry which would lead to ultimate knowledge.⁴ Where the offence is intended to be dependent upon a blameworthy mind in the form of the knowledge of the facts constituting the offence,

1. A I R 1950 All. 480.

3. 1 L R 22 Cal. 185.

2. A I R 1928 P C 24.

4. A I R 1941 Mad. 707.

the word 'wilfully' is used to denote this requirement. It denotes the necessity for proving that the accused had a guilty mind.¹ The intention of a person can only be gathered from his acts as every person is presumed to intend the natural consequences of his acts.²

Maliciously : 'Maliciously' implies an act or omission actuated by some improper motive or purpose. It is not correct to say that evidence of absence of reasonable and probable cause is evidence of malice. A man may do an act or abstain from doing an act by malice and yet he may have reasonable and probable cause for the same.³ The nature of malice varies in law with the proceeding in which it is in question. It has generally to be inferred from the previous and subsequent conduct of the parties, or the terms upon which they lived.⁴

Prosecution : The present section of the Act lays down the law that members of a registered society are liable to be prosecuted and punished as strangers. A member of such a society may be prosecuted for theft, embezzlement of any money or other property of the society, or for wilful and malicious destruction or injury to the property of the society, or for forging any deed, bond security for money, receipt or other instrument belonging to the society whereby the funds of the society may be exposed to loss. The prosecution of such an accused member shall be proceeded with in accordance with the ordinary criminal law of the land, and if convicted, shall be punished in the like manner as a stranger found guilty of the like offence. The prosecution holds the *prima facie* duty of proving the guilt of the accused and the onus cannot be shifted to the accused to prove his innocence.⁵ Unless otherwise directed by the Statute, the presumption of innocence casts upon the prosecution the burden of proving every ingredient of the offence.⁶ Witnesses essential to the unfolding of the narrative, on which the prosecution is based, must be called by the prosecution, whether in the result the effect of their testimony is for or against the case of the prosecution.⁷ It is the place of commission of the offence which decides the question of prosecuting Court, and hence the Court must satisfy itself on the point of jurisdiction before proceeding with the prosecution.⁸

12. Societies enabled to alter, extend or abridge their purposes : Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society ;

1. 1957 Cr. L J 1979.

3. A I R 1958 Pat. 329.

6. I L R 1941 All. 843.

7. A I R 1954 Cal. 305.

2. A I R 1952 Bhopal 25.

4. Phipson, Ev. 8th Ed., 151.

6. 1922 I C 85.

8. A I R 1959 All. 67.

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

COMMENTS

Scope : This section is based on Section 27 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. C. 112) and reproduces the English section with a few verbal changes.

This section empowers the governing body of any society registered under this Act which has been established for any particular purpose or purposes, to alter, extend, or bridge such purpose to or for other purposes within the meaning of the Act. Where a society is established for a particular purpose, and the governing body thinks that an alteration, extension, or abridgement of that purpose, or an amalgamation with any other institution, is advisable, the proposed modification or amalgamation may be submitted by the governing body to the members, and a special meeting may be convened to consider it. But no proposition can be carried into effect unless the report has been delivered or sent by post to every member of the society ten days before the special meeting, and the proposition is agreed to by three-fifths of the members, and has been confirmed at a subsequent meeting held at an interval of one month.¹

The procedure prescribed in this section for altering or extending the purpose of a registered society is mandatory. Under this section a proposal for altering or extending the purpose of the society has to be passed by a special majority of members and not by a bare majority.²

The word "purpose" as used in Sections 1 and 12 of the Act and the word "object" as used in Section 12 of the Act has been treated in the Act as synonymous words.³

The majority of members can amend a rule when it is against the fundamental principles of the society,⁴ and a member is bound by such altered rule.⁵ But it is not open to the majority to alter the fundamental principles upon which an association is founded. This point was laid down in a case which came up before the Madras High Court,⁶ which related to an association formed for the uplift of the Madhya doctrine. The Memorandum of Association empowered the council of the association to make bye-laws not inconsistent with the fundamental objects, and to alter or modify them by majority at the annual general meeting. At a meeting of the association a resolution was carried by a majority of the members present giving precedence to their own Guru and overriding the

1. Halsbury, Vol. 2, p. 10.

3. A I R 1959 All. 598.

6. I L R 22 Bom. 451.

2. A I R 1959 All. 598.

4. I L R 7 Cal. 1.

6. A I R 1931 Mad. 12.

claims of the minority for equal treatment. The Court held that the resolution seeking to confer a preferential treatment of one Mutt was *ultra vires* being distinctly a violation of the essential object of the association which was to promote the study of Sanskrit and in particular of the Dvaita philosophy of Sri Madwacharya amongst the Madhawas as a whole.

The above decision is based on several leading English cases, the first of which is *Milthgen v. Mitchell*.¹ In that case, a chapel was erected and dedicated exclusively as a place of worship for Presbyterians who conformed to the discipline and doctrines of the National Church of England. By a resolution of the general body passed subsequently other preachers were allowed to preach and the question arose, how far the resolution were valid. The Court held that it was not competent to the members to alter the fundamental principles upon which the association was formed and destroy the trust upon which the property was held.

As Lord Davey observed in the case of *Free Church of Scotland v. Overtoun*,² "the question in each case is what were the religious tenets and principles which formed the bond of union of the Association for whose benefit the trust was created? I do not think that the Court has any test or touchstone by which it can pronounce that any tenet forming part of the body of doctrine professed by the Association is not vital, essential or fundamental, unless the parties have themselves declared it is not to be so. The bond of union, however, may contain within itself a power in some recognised body to control, alter or modify the tenets and principles at one time professed by the Association. But the existence of such a power would have to be proved like any other tenet or principle of the Association".

Provisions whether mandatory: The procedure prescribed in Section 12 of the Societies Registration Act for altering, extending or abridging the purpose of a registered society is mandatory.³

Procedure analysed: The procedure laid down by Section 12 of the Societies Registration Act for alteration, extension or abridgement of the purposes of the society contemplates the following steps which must be taken for the purpose:—

- (i) Submission of the proposal by the governing body to members of the society in writing or printed report;
- (ii) 10 days' notice to members for holding a special general meeting;
- (iii) Consideration of proposal by the special general meeting convened for the purpose;
- (iv) Resolution of the special general meeting adopting the proposal by three-fifths majority of the members of the society;
- (v) Confirmation of the resolution passed by the special general meeting in another special general meeting to be convened by the governing body at an interval of one month after the former meeting.

1. 40 ER 862.

2. 1904 A C 515 at p. 646.

3. AIR 1959 All, 598.

A perusal of the section and the relevant amended and modified law enacted in Acts of various States clearly shows that it is the intention of the legislature to put a restriction upon the majority to alter the fundamental principles upon which the society is founded.¹ A resolution passed by a majority of the members of a society to transfer the property of the society held in trust to be used for a particular purpose to other person or body for the use of a different purpose was held as invalid.² Where a decree has been passed, a resolution passed by the majority of the society to increase the strength of the managing committee which was fixed in the prior scheme decree has been held as inoperative.³ However, if the matter is related merely to the internal management without, in any way, affecting the fundamental basis on which the society was started, the majority decision would bind the society.⁴

Effect of change of name: If the name of a society is changed, an altered certificate of registration must be obtained by the society from the registering authority in accordance with the procedure laid down for the purpose. The change of name will affect from the date of recording the change by the registering authority. However, legal proceedings pending or to be instituted by or against the society will not be affected in any way by the change of name of the society.

Powers of General Body to alter strength of Managing Committee when prior scheme decree has fixed it at a certain number: A decree in scheme suit cannot be altered except by a fresh suit to carry out the desired alterations in it. Where the General Body of the Committee, purporting to act under Section 12 of the Societies Registration Act, by its resolution increased the strength of the Managing Board which was fixed in prior scheme decree, held that the resolution was *ultra vires* of their power.⁵

13. Provision for the dissolution of societies and adjustment of their affairs: Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

1. 59 M L J 770.

2. 58 LT 726.

3. (1958) 1 Andhra WR 244.

4. 59 M L J 770.

5. (1958) 1 Andh. WR 244.

Assent required : Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

Government consent : Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of a Provincial Government of registration.

COMMENTS

Scope : This section is based on Section 29 of the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112) which it reproduces with a few verbal changes.

Section 13 deals with the dissolution of societies and the adjustment of their affairs. It is only such matters as are dealt with in that section that are to be agitated by way of a suit in the principal Court of original civil jurisdiction of the district in which the principal building of the society is situate, but dispute relating to the society and the third person are not governed by this provision.¹

Three-fifths or any larger number of members may determine that a society shall be dissolved either immediately or at the time then agreed upon. In such event all necessary steps must be taken for the disposal and settlement of the property of the society, its claims and liabilities. In the event of a dispute among the governing body or members, and adjustment of the affairs of the society is to be made by a Court.²

According to the provisions of this section the adjustment of the affairs of the societies registered under this Act is to be referred to the principal Civil Court of an original jurisdiction, i.e., the District Court. Hence a reference to arbitration and an award and decree thereon by a subordinate Court were without jurisdiction and of no effect.³

As to the liability of a member of a society on a winding-up see the undermentioned case.⁴

Principal Court of original civil jurisdiction : According to this section, the adjustment of the affairs of the societies registered under the Act is to be referred to the principal Court of original civil jurisdiction. Hence a reference to arbitration and an award and decree thereon is of no use and is without jurisdiction.⁵

Under the present section if dispute arises on dissolution of a society as to the adjustment of its affairs, it is to be referred to the principal Court of original civil jurisdiction of the district where the principal building of the society is situated. Thus this section confers jurisdiction on the district Civil Court only and no other Court can maintain reference. The expression 'district Court' means a city civil Court where there is one and where there is no such Court the principal civil Court of original

1. A I R 1960 Andhra Pra. 605.
2. Halsbury, Vol. 21, p. 16.
3. 1946 A M L J 27.
4. (1860) 15 L T O S 410.
5. 1946 A M L J 27.

jurisdiction. This expression has also been defined in clause (4) of Section 2 of the Civil Procedure Code, 1908 to mean the principal civil Court of original jurisdiction and also includes the local limits of the ordinary original civil jurisdiction of the High Court. It has been held that where there is a city civil Court the jurisdiction of a chartered High Court, which although has a concurrent jurisdiction with the city civil Court, is ousted.¹

It is a settled law that jurisdiction upon a Court is conferred by a statute, and therefore, the consent of the parties cannot invest a Court with jurisdiction which it does not possess.² The waiver does not ordinarily affect the question of jurisdiction.³ However, it has been held that where the Court has jurisdiction over the subject-matter, but there are irregularities in the initial procedure, the defendant who without objection goes to trial upon the merits, cannot subsequently dispute the jurisdiction of the Court.⁴ It may be noted that there is no estoppel against the defendant even if he does not object to the jurisdiction of the Court, provided there is complete absence of jurisdiction in the Court.⁵ But where the Court has jurisdiction over the subject-matter of the action and the defendant protests against the Court's jurisdiction on the ground of his being a foreigner, he will not be permitted to raise the question of jurisdiction after he has defended the suit on the merits and taken his chance of winning the case.⁶ It is not open to the parties to waive the bar of limitation or jurisdiction by agreement.⁷

Disputes on dissolution of society : The present section lays down the law that in the event of dissolution of a society necessary steps must be taken for the disposal and settlement of the property belonging to such society, its claims and liabilities according to the rules and regulations, or if the rules do not provide, then at the discretion of the governing body. If any dispute regarding the adjustment of the affairs of such society arises, it must be referred to the principal Court of original civil jurisdiction of the district where the principal office of the society is situated. A reference to arbitration is not permitted under the law.⁸

Disputes relating to society and third persons—If covered : Section 13 deals with the dissolution of societies and the adjustment of their affairs. It is only such matters as are dealt with in that section that are to be agitated by way of a suit in the principal Court of original civil jurisdiction of the district in which the principal building of the society is situate, but disputes relating to the society and the third persons are not governed by this provision.⁹

Suit by members of Board for declaration that election of the committee is invalid and for permanent injunction restraining committee from transaction of business, the Civil Court has jurisdiction to entertain the suit.¹⁰

1. A I R 1949 Pat. 318.
2. A I R 1931 All. 490.
3. A I R 1929 Oudh. 286.
4. I L R 49 Mad. 746.
5. I L R 44 Cal. 10.
6. A I R 1934 All. 741.
7. I L R 38 Mad. 374.
8. 1940 A M L J 27.
9. A I R 1960 Andh Pra. 605.
10. (1964) 1 Mad. L J 272.

14. Upon a dissolution no member to receive profit—Clause not to apply to Joint Stock Companies: If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or in default thereof, by such Court as aforesaid:

Provided, however that this clause shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of a Joint Stock Company.

COMMENTS

Scope: This section is based on Section 30 of the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112) and is a verbatim reproduction thereof.

Where a literary or scientific institution, not established for the purpose of gain, is dissolved by its members, its property ought to be given to some kindred institution, to be determined in manner prescribed in this section, even if the rules contain a provision that the property of the society on its dissolution is to be divided amongst its shareholders, such a provision being contrary to the Act.¹ A society falling within the general scope of the Act may be an institution in the nature of a joint stock company within the exception in this section, although it is not formed for the purpose of profit, if it has the other usual indicia of a joint stock company—as, for example, it has common properties derived from the contributions of its members and held by them in transferable shares.²

Society whether a company or partnership: A society registered under the Societies Registration Act, 1860, is neither a corporation nor a company incorporated under the Companies Ordinance, 1984. It is also not a partnership registered under the Partnership Act, 1932. It is a registered society of the individuals which has acquired the legal status by reason of its registration.³ It continues to exist and to function as such until its dissolution under the provisions of the Act. The properties of the society continue to be vested in the trustees or in the governing body irrespective of the fact that the members of the society for the time being are not the same as they were before, nor will be the same thereafter. The trustees or the governing body or the members of a society have no beneficial interests in the property belonging to the society like the shareholders of a company or the partners of a partnership firm.⁴

1. 43 Ch. D. 236.

3. 78 L J Ch. 204.

2. 67 L J Ch. 411.

4. A I R 1958 M P 773.

Surplus property how distributed: The members of a society, not having any personal beneficial interest in the property of the society, cannot receive any profit or surplus property on the dissolution of a society. They are, however, entitled to determine by the vote of prescribed majority to which other society the surplus property be given. It has been held that the surplus property of a dissolved society must be given to some kindred society.¹ It should also be noted that since a literary society carries no business, so it cannot be wound up as an unregistered company.²

The proviso to the present section provides that where a society is founded or established by the contributions of the shareholders in the nature of a Joint Stock Company, the shareholders are entitled to receive the surplus property on the dissolution of the society and the provisions of this section are not applicable to them. Where a literary or scientific society is founded by the issue of transferable shares, the holders of the shares are entitled to receive the surplus property on its dissolution.³ Similarly, where a society owns a common property arising out of the subscriptions of the members, the members are entitled to receive the surplus property on the dissolution of the society.⁴

15. **Member defined:** For the purposes of this Act a member of a society shall be a person who having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations:

Disqualified members: But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

COMMENTS

Scope: This section is based on Section 31 of the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112) the language of which is identical with that of the present section.

Termination of membership is regulated by the bye-laws of the association concerned.

In order to determine the quorum at a meeting it is necessary to find out who were the persons eligible to attend the meeting. The latter part of this section shows that in all proceedings under the Act a member whose subscription had been in arrear for over three months should not be counted as a member.⁵ Because a requisition to convene a meeting, otherwise good, is signed by some more persons who were on the roll of the society but who were not entitled to vote at the meeting, the requisition does not thereby become bad.⁶

1. (1889) 43 Ch. D 236.

3. (1898) 2 Ch. 72.

5. A I R 1941 Bom. 312.

2. 32 Digest 550.

4. (1898) 43 Ch. 83.

6. I L R 1941 Bom. 497.

Requisition by members not entitled to vote to convene meeting is however valid.¹

When the moneys and property belonging to the registered society are invested by the society with a firm the firm is at best an ordinary member of the society and is not by reason of such membership in the position of a trustee in respect of the amount invested.²

Suit to enforce right to membership : Where an institution is managed by subscription contributed by the public no suit lies against the Managing Committee by any member of the public to enforce the right to subscribe and to be admitted to the privileges of membership.³

Punishing office bearers : Domestic tribunal is not empowered to take penal action or to remove its President merely because it elected him. President of an unregistered association does not contract misconduct merely for having helped another office bearer on trial for offence of criminal misappropriation and he cannot be removed merely for that reason. Every person is presumed to be innocent until he is proved to be guilty. Opportunity to defend has also to be given in such cases.⁴

Admission to membership : The society is empowered to make its own rules and regulations for the admission of persons to its membership. The Act does not lay down any rule making it obligatory on the governing body of the society to admit a member of the public on payment of the prescribed subscription.⁵ A firm may also be admitted to the membership of a society, but the investment of property belonging to the society by the society with the firm which has been admitted to its membership will not make the firm a trustee of the said property.⁶

Eligibility to vote : This section makes it clear that a person whose subscription at the time shall have been in arrears for a period exceeding three months is not eligible to vote. Thus, where a person's name is entered on the roll of the members but who has not paid subscription for a period more than three years, it is improper to take into consideration his vote or to count for the determination of quorum.⁷ However, a requisition by members to call a meeting which is otherwise valid does not become invalid merely because it is signed by some members who were not eligible to vote at the meeting.⁸

Principles governing relations of members of Joint Stock Companies apply to case of a registered society—Opinion and acts of majority binding on whole society : The principles governing the relations of members of joint stock companies would apply to the case of a society registered under the Societies Registration Act, the opinion and acts of the majority would be binding on the whole society especially when the rules of the society are to that effect. The minority feeling aggrieved can sue the society even without obtaining the sanction and consent of the society. The power conferred on the majority must, however, be exercised *bona fide* and the Court interferes only to prevent unfairness or oppression. The supremacy of the majority

1. A I R 1941 Bom. 312.

3. A I R 1916 Oudh 94.

6. 34 I C 263.

7. A I R 1941 Bom. 312.

2. A I R 1951 Mad. 875.

4. P L D 1969 Kar. 692.

6. A I R 1951 Mad. 875.

8. A I R 1941 Bom. 312.

is subject to three exceptions : (1) Where the acts complained of are *ultra vires* the society ; (2) where the acts complained are a fraud on the minority ; and (3) where there is absolute necessity to waive the rule in order that there may be no denial of justice.¹

Requisition by members not entitled to vote to convene meeting—Validity : A requisition by the members of the society to convene a meeting which is otherwise valid is not rendered bad only because it is signed by persons not entitled to vote.²

Determination of quorum for meeting of a society : In order to determine the quorum for a meeting of a society, it is necessary to find out who were the members eligible to attend the meeting. It is improper to take into consideration the names of the persons who were on the roll but who had not paid their subscription or were in arrears for over three months.³

Powers of the majority in the matter of religious association where resolution for preferential treatment of the Guru of one particular Mutt opposed to the basic principle of equality of treatment is invalid.⁴

16. Governing body, defined : The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

COMMENTS

Scope : This section is based on Section 32 of the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112) which runs as follows :—

“The governing body of the institution shall be the council, directors committee, or other body to whom, by Act of Parliament, Charter or the rules and regulations of the institution, the management of its affairs is entrusted.....”

Duty of officers : It is the right and duty of the officers of a corporation to inform and guide the corporators in matters affecting the corporate interest.⁵

The managing committee of a society or institution which is maintained by public subscription is under no obligation to the public to accept whatever subscription is offered to it and to admit the person so offering a subscription as a member of the society.⁶

A society registered under this Act is a corporate body with a separate juristic personality which is distinct and separate from that of its members. The moneys and property belonging to the society are vested either in the trustees, if any, duly appointed under the provisions of the Act, or in the absence of the trustees in the governing body. A firm is not a trustee in respect of the amount invested with it, and the fact of investment of

1. A I R 1940 Bom. 516.

3. A I R 1941 Bom. 312.

5. (1907) 1 Ch. 5. C A.

2. A I R 1941 Bom. 812.

4. A I R 1981 Mad. 12.

6. A I R 1916 Oudh 94.

money, etc., in the firm will not by itself make the firm a trustee simply on the ground of its being a member of the society.¹

Position of governing body: A society registered under the Act is a corporate body with a separate juristic personality which is distinct and separate from that of its members and the governing body. A registered society has a perpetual succession, and therefore, it continues to exist and to function as such until its dissolution under the provisions of the Act. The members as well as the governing body of the society are not always the same and fluctuate from time to time. Since a registered society is a juridical person but with no physical existence, it can exercise its powers and perform its functions only through its governing body which is entrusted with the management of the affairs of the society. The persons who constitute the governing body of a society or any other managing committee whatever name it may be called are responsible for the management of the society. The property of the society, if not vested in the trustees, is vested in the governing body. The members of the governing body are the agents of the society and hence if they act fraudulently, they will be held liable for misconduct.²

*[16-A. **Supersession of governing body of a society:** (1) Notwithstanding anything contained in the memorandum of association, rules or regulations of a society registered under this Act, if, after such inquiry as may be necessary, the Provincial Government is of the opinion that the governing body of the society—

- (a) is unable to discharge or persistently fails in discharging its duties, or
- (b) is unable to administer its affairs or meet its financial obligations, or
- (c) generally acts in a manner contrary to public interest or the interests of the members of the society,

the Provincial Government may, by notification in the official Gazette, declare the governing body to be superseded for such period, not exceeding one year, as may be specified in the notification.

(2) On the publication of a notification under sub-section (1).—

- (a) the office bearers and other members of the governing body shall cease to hold office; and
- (b) all functions of the governing body shall during the period of supersession, be performed by a governing

¹Section 16-A subs. for Punjab by the Punjab Act, IX of 1976, for Sind by the Sind Act, V of 1976 and for the Baluchistan by the Baluchistan Act, XXVII of 1976.

1. AIR 1951 Mad. 875.

2. (1854) 5 H L C 85.

body constituted by the Provincial Government or by such authority as the Provincial Government may appoint for the purpose.

(3) On the expiry of the period of supersession the governing body of the society shall be reconstituted in accordance with its memorandum of association, rules and regulations.]

17. Registration of societies formed before the Act—Assent required: Any company or society established for a literary, scientific, or charitable purpose and registered under Act (VII of 1913) or any such society established and constituted previously to the passing of this Act but not registered under the said Act (VII of 1913) may at any time hereafter be registered as a society under this Act; subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of a company or society registered under Act (VII of 1913), the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

COMMENTS

Scope: Paragraph 2 of this section is based on Sec. 32 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., c. 112).

18. Such societies to file memorandum, etc., with Registrar of Joint Stock Companies: In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint Stock Companies, a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body together with a copy of the rules and regulations of the society certified as provided in Sec. 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

COMMENTS

Scope: Where rules were made before the society was registered but a copy of them was lodged with the Registrar under this section, the

fact that they were so filed does not, however, invest them with any special legal force.¹

The preceding Section 17 and the present Section 18 of the Act make specific provisions as to how the pre-Act unregistered societies are to be registered. A perusal of the relevant provisions makes it clear that no special force is attached to the rules and regulations made by the society merely on the ground that they have been made before its registration and have been duly filed with the Registrar at the time of registration of the society.²

Bye-law of society that it shall stand dissolved in case no Sant Sad Guru reappeared within two years of the death of the last Sant Sad Guru is valid. Bye-law violates against Section 13 and must therefore be deemed to be invalid and inoperative.³

19. Inspection of documents: Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document, or any part of any document to be certified by the Registrar, on payment of twelve paise for every hundred words of such copy or extract.

Certified copies: And such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

COMMENTS

Presumption of proper registration: Presumption that an association is duly registered arises not on the certificate of registration granted by the Registrar under Sec. 3 of the Act, but on the copies of the rules and regulations and Memorandum certified under Section 19, which constitutes them *prima facie* evidence of the matters therein contained.⁴

Proof of documents: All documents filed with the Registering Authority by a society or a company are public records of private documents kept in the office of Government within the meaning of Section 75 of the Evidence Act, 1872. Hence, a certified copy of such a document is admissible in evidence.⁵ It should be noted that the copies thus given are admissible for the purpose of proving the contents of original documents. However, the execution should be proved in the ordinary way like other private documents.⁶ The certified copies of the rules and regulations and memorandum of a society constitute *prima facie* evidence of the matters therein contained and give rise to a presumption that the society is duly registered.⁷

Right to inspect documents: It is no doubt that the fact of a document being a public document and the fact of its being open to inspection are not co-extensive. The question whether any person has a

1. AIR 1925 Oudh 107.

2. AIR 1925 Oudh. 107.

3. AIR 1963 All. 248.

4. AIR 1938 PC 73.

5. 45 IC 338.

6. AIR 1943 PC 83.

7. 138 ALJ 194.

right to inspect certain document depends rather on the special enactment and there is no general enactment regulating the right of inspection of public documents.¹ The Societies Registration Act, however, allows inspection of all documents filed with the Registrar on payment of a prescribed fee.

Whether society was registered under the Act: To prove the registration of the plaintiff society the plaintiff ought to have filed the certificate of registration as well as the certified copy of Memorandum of Association and the rules and regulations of the plaintiff-society which are *prima facie* evidence of the matters therein contained under Section 19. Under law the Memorandum of Association and the rules and regulations of the plaintiff-society could be proved by filing the certified copies of these documents. Under Section 65 of the Evidence Act, filing of the certified copy of the document was essential and no other kind of secondary evidence was admissible. Oral evidence of the various witnesses produced by the plaintiff was of no use to prove that the plaintiff-society was a registered society.²

Remedy of the aggrieved person where inspection or copy has been wrongly refused: The statutes which specially confer the right of inspection of documents do not provide any remedy to which recourse may be made when inspection or copy is refused. However, an aggrieved person may in a proper case get a *writ of mandamus* from the High Court under Section 45 of the Specific Relief Act.³

20. To what Societies Act applies: The following societies may be registered under this Act:

Charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

COMMENTS

English Law: This section is based on Sec. 33 of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., *cl.* 112), which reads as follows:—

"The Act shall apply to every institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs:

1. 3 IC 284.

2. AIR 1880 (N O C) 13 (Delhi).

3. 1 LR 8 Cal. 166.

provided that the Royal Institution and the London Institution for the advancement of Literature and the diffusion of useful knowledge, shall be exempt from the operation of the Act."

Scope : The Literary and Scientific Institutions Act, 1854, applies to all institutions, whether incorporated or not, for the time being established for the promotion of science, literature, the fine arts, for adult institutions, the diffusion of useful knowledge, the foundation or maintenance of libraries, reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.¹

Under the corresponding English Statute, it has been held that the Act is not confined to institutions of a public or charitable nature, but includes private institutions established for the purposes of the Act.² The Act does not authorise the establishment of institutions for recreation or enjoyment as distinguished from instruction.³ A literary and scientific institution founded and established by the issue of transferable shares, entitling their holders to the property of the institution, but bearing no dividend, has been held to be an institution "founded or established by the contributions of shareholder in the nature of a joint stock company" so as to escape the operation of Section 30 of the Literary and Scientific Institutions Act, 1854, which forbids a distribution of the property among the members on a dissolution.⁴

A society was formed in 1844 for the promotion of "moral and intellectual improvement by means of libraries for circulation and reference, newspapers and periodical publications, lectures, discussions and classes for instruction and improvement in literature and the arts and sciences". The society consisted of life members of shareholders, and annual subscribers. The property was vested in trustees. No trust deed was executed and the society was not registered under the Companies Acts. It was held that the society was an institution within the meaning of the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., c. 112), Section 33.⁵

A society falling within the general scope of the Literary and Scientific Institutions Act, 1854 may be an institution in the nature of a joint stock company within the exception in Section 30 of the said Act although not formed for the purposes of profit, if it has the other usual indicia of a joint stock company as, for example, if it has common property derived from the contributions of its members and held by them in transferable shares.⁶

When once registration of a society has been effected, the provisions of the Societies Registration Act will apply, and such bye-laws as are inconsistent with them will become inoperative.⁷

Application of the Act : The Societies Registration Act, 1860 is applicable to various societies as detailed in Section 20. The question

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| 1. 1908 A C 162. | 2. (1898) 2 Ch. 72. |
| 3. Halsbury, Vol. 21, p. 3. | 4. 67 L J Ch. 411. |
| 5. 59 L J Ch. 116. | 6. 78 L T 639. |
| 7. A I R 1939 All. 567. | |

as to whether a religious society, the object of which is to obtain possession of the mosque property or other endowed property or to manage it for the benefit of a public mosque, is registrable under the Act, has been answered in the affirmative.¹ However, a society registrable under this Act cannot become a partnership.² It is remarkable to note that it is incorrect to say that a society is not registrable under this Act because some of the bye-laws framed by it before its registration are inconsistent with the provisions of this Act.³

Nothing in objects clause of Memorandum of Association indicating that the first clause was the dominant object. In the case of a society having more than one object and registered under the Act, it cannot be said that the first of the objects clause of the Memorandum of Association must be taken as the primary object and the others as ancillary.⁴

Person taking house on rent for starting hospital for women : *Held*, principal, i.e. hospital being undisclosed and not being legal body in absence of registration person was personally liable for rent under Section 230.⁵

Where a society is formed for certain purposes which are primarily charitable, the fact that some of the purposes are not strictly charitable but religious do not render the society unregistrable under this Act, as for instance, a society formed for the purpose of improvement of Islamic education and rendering possible pecuniary help to the poor *musaffers* and *Alim* and *ulema*, is registrable under this Act.⁶

Held, on consideration of the objects and bye-laws of the plaintiff, Radhaswami Satsang Sabha, Dayalbagh, which was a society registered under the Societies Registration Act that the paramount object of the Society was charitable, and even though some of the objects were religious, the dominant intention was charitable and that the Sabha could be validly registered under the Act.⁷

With regard to charitable corporation Halsbury observed that as a charitable corporation exists solely for the accomplishment of charitable purposes, it is necessarily trustee of its corporate property, whether the beneficiaries are its members or not. Hence like other trustees, whether charitable or otherwise, a charitable corporation is also subject to the jurisdiction of the Court as a trustee.⁸

Applicability—Society for charitable purposes : On consideration of the objects and bye-laws of the plaintiff, Radhaswami Satsang Sabha Dayalbagh, which was a society registered under the Societies Registration Act that the paramount object of the Society was charitable, and even though some of the objects were religious, the dominant intention was charitable and that the Sabha could be validly registered under the Act.⁹

Sharing of profits not permissible : The very circumstances that a society is registered under the Societies Registration Act is inconsistent

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| 1. 3 A L J 124. | 2. A I R 1958 Mad. 394. |
| 3. A I R 1939 All. 557. | 4. (1963) 40 I T R 75. |
| 5. A I R 1963 Pat. 131. | 6. A I R 1940 Mad. 167. |
| 7. A I R 1969 All. 248. | 8. Halsbury, Vol. IV, 657. |
| 9. A I R 1969 All. 248. | |

with any agreement or intention to share its profits. Therefore because the registration under the Societies Registration Act is invalid or improper the objects of the society not coming within the scope of Section 20, it cannot have the effect of constituting the members of the society into a partnership.¹

Society established for the purposes of recreation: In the case of *Re Badger, Mansell v. Cobham*² a case decided under the Literary and Scientific Institutions Act, 1854, it has been held that the institutions established for the purposes of recreation or enjoyment, e.g., the playing of billiards as distinguished from the literary, scientific and other instructional purposes are not within the scope of the Act.

Institution of Civil Engineers, the property and income of which were legally appropriated and applied to the general advancement of mechanical or engineering science, not to the promotion of the professional interests of its members, was held to be registrable under the Act.³

A society organised for the promotion of advancement of agriculture was held to be a charity society.⁴

In the case of *Radha Swami Satsang Sabha v. Tara Chand*,⁵ it was objected that there was no society registrable under the Societies Registration Act. The objects of the Sabha as set out in the Memorandum of Association, were as follows:

- (a) To regulate the conduct of business pertaining to Satsangs, i.e., the followers of the Radhaswami faith, and the institution of the Radhaswami faith for the conduct of religious services, i.e., the central Satsang and branch Satsang.
- (b) To collect, preserve and administer the properties, movable and immovable, that have been or may hereafter be dedicated to Radhaswami Dayal or that may be acquired for or presented to Radhaswami Satsang and to deal with and apply the same to the furtherance of the religious and charitable objects of that Satsang.
- (c) To do the above and all such other things as are incidental or conducive to the attainment of the above objects, provided that the mandates, if any of the Sant Sat Garu of the time, who is recognized as the representative of the Supreme Creator Radhaswami Dayal shall be paramount and absolute in all matters referred to above.

It was proved that the Sabha was a well-organised society with a minimum of 40 members, having a secretary with a minimum of 40 members, having a secretary and an executive committee. It had an educational institute with a managing committee and also had a dairy and an agricultural firm, the ostensible objects of which were,—

Firstly, to provide to the above institute and members of the community an opportunity of obtaining first-hand knowledge of the various practices employed in modern farming; and

1. A I R 1958 Mad. 394.
2. 92 L T 230.
3. 63 L T 36.
4. 9 T C 62.
5. A I R 1939 All. 557.

“*Secondly*, to secure a pure and abundant supply of fresh vegetables and pure butter and milk to the residents of Dayalbagh. The society had a hospital and Sadhus were supplied board and lodging by it. It was held that the society was a charitable institution.”¹

Religious purpose: The improvement of Islamic education and rendering pecuniary help to the poor musaffars, etc., are charitable purposes and where a society is formed for such purposes, the fact that one of the objects of the society is also to conduct the affairs of the mosque which does not involve the performance of any religious service by the members of the society, cannot render the society a society formed for religious purposes.²

Charitable purpose—Interpretation: Main and predominant purpose of Society in suit was religious and not charitable. It is not a charitable society within the meaning of the Act. Registration of society is without jurisdiction.³

Interpretation: Main and predominant purpose of Society in suit was religious and not charitable. It is not a charitable society within the meaning of the Act. Registration of society is without jurisdiction.⁴

Charitable society existing for the management of a public mosque: A religious purpose may be a charitable purpose, and a society for religious purposes will ordinarily be a society for charitable purposes. Charitable purposes are not restricted to the giving of alms, or other charitable reliefs, but the words have a such wider legal meaning. It was held that:—

a religious society which had for its object the control and management of, and the protection of the property appertaining to, a certain public mosque was a society which might legally be registered under the provision of the Societies Registration Act, 1860.⁵

1. (1928) 1 K B 611.
2. A I R 1940 Mad. 167.
3. A I R 1980 Pat. 138.
4. A I R 1980 Pat. 138.
5. 1906 A W N 59.

APPENDIX
THE LITERARY AND SCIENTIFIC INSTITUTIONS
ACT, 1854

(17 and 18 Vict., c. 112)

[11th August, 1854]

An Act to afford greater facilities for the establishment of institutions, for the promotion of Literature and Science and the Fine Arts, and to provide for their better regulation.

Whereas it is expedient that greater facilities should be afforded for procuring and setting sites and buildings in trust for institutions established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, and that other provisions should be made for improving the legal condition of such institutions : be it therefore enacted as follows :

1. One acre may be granted as site for institutions, etc. : Any person in England, Wales or Ireland, being seised in fee simple, fee tail or for life or and in any manor or lands of freehold, copyhold, or customary tenure, and having the present beneficial interest therein, may grant, convey, or enfranchise, by way of gift, sale or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, whether built upon or not, as a site for any such institution as hereinafter described : provided that no such grant made by any person seised only for life and in any such manor or lands shall be valid, unless if there be any person next entitled to the same in remainder in fee simple or fee tail, and if such person be legally competent he shall be a party to and joint in such grant ; provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord of a manor for any such purpose so aforesaid, the rights of all commoners and others having interest of a like nature in the said land shall be barred and divested by such conveyance.

2. Chancellor and Council of the duchy of Lancaster empowered to grant lands for the site of an institution : The Chancellor and Council of Her Majesty's duchy of Lancaster for the time being, by any deed or writing under the hand and seal of the Chancellor of the said duchy for the time being,

attested by the clerk of the Council of the said duchy for the time being, for and in the name of Her Majesty, her heirs and successors, may, if they see fit, grant, convey or enfranchise, to in favour of such institution, any land forming part of the possessions of the said duchy, not exceeding in the whole one acre in any one parish, upon such terms and conditions as to the said Chancellor and Council shall seem meet; and where any sum or sums of money shall be paid for the purchase or consideration for such land so to be granted, conveyed or enfranchised as aforesaid, the same shall be paid into the hands of the Receiver-General for the time being of the said duchy or his deputy, and shall be by him paid, applied and disposed of according to the provisions and regulations contained in an act of the forty-eighth year of the reign of his late Majesty King George the Third, chapter seventy-three, or any other acts now in force for that purpose.

3. Officers of the duchy of Cornwall empowered, upon sufficient authority, to grant land for the site of an institution: Any three or more of the principal officers of the duchy of Cornwall, under the authority of a warrant issued for that purpose under the hands of any three or more of the special commissioners for the time being for managing the affairs of the duchy of Cornwall, or under the hands of any three or more of the persons who may hereafter for the time being have the immediate management of the said duchy, if the said duchy shall be then vested in a Duke of Cornwall, then under the hands of any three or more of the principal officers of the said duchy, or under the hands of any three or more of the persons for the time being having the immediate management of the said duchy, may, if they think fit, and are so authorised, by deed grant, convey, or enfranchise to or in favour of any existing or intended institution any land forming part of the possession of the said duchy of Cornwall, not exceeding in the whole one acre in any one parish, upon such terms and conditions to the said special commissioners or principal officers or such other person as aforesaid, shall seem meet.

4. If lands cease to be used for the purposes of the act they shall revert: Provided that upon any land so granted by way of gift as aforesaid, or any part thereof, ceasing to be used for the purposes of the institution, the same shall thereupon immediately revert to and become again a portion of the estate or manor or possessions of the duchy as the case may be to all intents and purposes as fully as if this act or any such grant as aforesaid had not been passed or made, except that

where the institution shall be removed to another site the land not originally part of the possessions of either of the duchies aforesaid may be exchanged or sold for the benefit of the said institution, and the money received for equality of exchange or on the sale may be applied towards the erection or establishment of the institution upon the new site.

5. Persons not having legal estates empowered to convey lands for the purposes of this Act without the concurrence of their trustees: Where any person shall be equitably entitled to any manor or land, but the legal estate therein shall be vested in some trustee or trustees, it shall be sufficient for such person to convey the land proposed to be granted for the purpose of this Act, without the trustee or trustees being party to the conveyance thereof; and where it is deemed expedient to purchase for the purpose aforesaid any land belonging to or vested in any infant or lunatic, such land may be conveyed by the guardian or curator of such infant or the committee of such lunatic respectively, who may receive the purchase-money for the same, and give valid and sufficient discharges to the party paying such purchase-money, who shall not be required to the application thereof.

6. Corporation, justices, trustees, etc., may convey lands for the purposes of this Act: Any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, may, subject to the provisions hereinafter mentioned, grant, convey or enfranchise for the purpose of this Act such quantity of land as aforesaid, in any manner vested in such corporation officers, justices, trustees, or commissioners: provided that no ecclesiastical corporation sole, being below the dignity of a bishop, shall be authorized to make such grant without the consent in writing of the bishop of the *diocese* to whose jurisdiction the said ecclesiastical corporation shall be subject: provided also, that no parochial property shall be granted for such purpose without the consent of a majority of the ratepayers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the Act passed in the sixth year of the reign of his late Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other property of Parishes and of Incorporations or Unions of Parishes in England and Wales", and without the consent of the poor law board, to be testified by their seal being affixed to the

deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a board of guardians, testified by the guardians of such union or parish being the parties to convey the same; and that no property held upon trust for charitable purposes shall be granted without the consent of the charity commissioners.

7. How much parties may convey: Where any officers, trustees, or commissioners, other than parochial trustees, shall make any such grant, it shall be sufficient if a majority or quorum authorised to act of such officers, trustees, or commissioners, assembled at a meeting duly convened, shall, assent to such grant, and shall execute the deed of conveyance, although they shall not constitute a majority of the actual body of such officers, trustees, or commissioners; and the justices of the peace may give their consent to the making any grant of land or premises belonging to any county, riding, or division by vote at their general quarter sessions, and may direct the same to be made in the manner directed to be pursued on the sale of the sites of goals by an Act passed in the seventh, year of the reign of his late Majesty George the Fourth intitled "An Act to authorise the Disposal of Unnecessary Prisons in England".

8. Where part only of lands subject to a rent under lease is conveyed, the rent and fine upon renewal of lease may be apportioned: If part only of any land held in fee subject to a perpetual rent, or comprised in a lease for a term of years unexpired, shall be conveyed or agreed to be conveyed for the purpose of this act, the rent payable in respect of the land subject thereto, and any fine certain or fixed sum of money to be paid upon any renewals of the lease, or either of such payments, may be apportioned between the part of the said land so conveyed or agreed to be conveyed, and the residue thereof, and such apportionment may be settled by agreement between the parties following; that is to say, the person for the time being entitled to the rent where the land is held in fee or the lessor or other the owner subject to such lease of the lands comprised therein, the person entitled to the fee subject to the rent, or the lessee or other party entitled to the land by virtue of such lease or any assignment thereon for the residue of the term thereby created, and the part of whom such conveyance as aforesaid for the purpose of this Act is made or agreed to be made; and when such

tionment shall be so made it shall be binding on all or under-lessees and other persons and corporations whatsoever, whether parties to the said agreement or not.

9. Liabilities of tenants, and remedies of landlords as to lands not conveyed: In case of any such apportionment as aforesaid, and after the lands so conveyed or agreed to be conveyed as aforesaid shall have been conveyed, the person entitled to the fee or other estate in the lands subject to the rent, the lessees, and all parties entitled under him to the lands not included in such conveyance, shall, as to all future accruing rent, and all future fines certain or fixed sums of money to be paid upon renewals, be liable only to so much of the rent or of such fines or sums of money as shall be apportioned in respect of such last-mentioned lands, and the party entitled to the rent charged or reserved shall have all the same rights and remedies for the recovery of such portion of the rent last aforesaid as previously to such apportionment he had for the recovery of the whole rent charged or reserved; and all the covenants, conditions, and agreements, except as to the amount of rent to be paid and of the fines or sums of money to be paid upon renewals, in case of any apportionment of the same respectively, shall remain in force with regard to that part of the land which shall not be so conveyed as aforesaid, in the same manner as they would have done in case such part only of the land had been subject to the rent or included in the lease.

10. Any number of sites for separate institutions: Any person or corporation may grant any number of sites for distinct and separate institutions, although the aggregate quantity of land thereby granted by such person or corporation shall exceed the extent of one acre, provided that the site of each institution do not exceed that extent.

11. Grants of sites to corporations or trustees for purposes of institutions: Where the institution shall not be incorporated, the grant of any land for the purpose of such institution, whether taking effect under the authority of this Act or any other authority, may be made to any corporation sole or aggregate, or to several corporations sole, or to any trustees whatsoever, be held by such corporations or trustees for the purpose of such institution.

12. Incorporation of 13 and 14 Vict., c. 28: The provisions of the Act of the fourteenth Victoria, chapter twenty-eight, shall be applicable to the conveyances of lands in

England, Wales, and Ireland made or to be made to trustees, not being corporations, for the purposes of such institutions.

13. Form of grants, etc. : All grants, conveyances, and assurances, of any site for an institution under the provisions of this Act, may be made according to the form following or as near thereto as the circumstances of case will admit ; (that is to say) :

"I or We (or the corporate title of a corporation) under the authority of an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled

do hereby freely and voluntarily, and without any valuable consideration (or do in consideration of the sum of _____ to me, or us, or the said _____ paid,) grant and convey (add, if necessary, enfranchise) to _____ all (description of the premises) and all (my, or our, or the) right, title, and interest of the _____ to and in the same and every part thereof, to hold unto and to the use of the said corporation and their successors, or of the said _____ and his or their (heirs, executors, or administrators or successors) for the purposes of the said Act and to be applied as a site for _____ and for no other purpose whatever ; such _____ to be under the management and control (set forth the mode in which and the persons by whom the institution is to be managed and directed ; in cases where the land is purchased, exchanged or demised, usual convenient or obligations for title may be added).

In witness whereof the conveying and other parties have hereunto set their hands and seals (or seals only, as the case may be,) this _____ day of _____

Signed, sealed, and delivered by the said _____ in the presence of _____

And no bargain and sale or delivery of seisin shall be requisite in any conveyance intended to take effect under the provisions of this Act, nor more than one witness to the execution by the conveying party.

14. Death of donor within twelve months not to invalidate grant : Any deed executed for the purposes of any institution to which this Act applies, without any valuable consideration, shall continue valid, or otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof.

15. Mode of conveying the lord's interest and that of copyholder in copyhold land : Where land of copyhold or customary tenure shall have been or shall be granted for the purpose of such institution the conveyance of the same by any

deed wherein the copyholder shall grant and convey his interest, and the lord shall also grant and convey his interest, shall be deemed to be valid and sufficient to vest the freehold interest in the grantee or grantees thereof without any surrender or admittance or enrolment in the lord's Court, but the fees (if any) payable by the custom of the manor upon enfranchisement shall be paid to the steward.

16. Application of purchase-money for land sold by any ecclesiastical or corporation sole : Where any land shall be sold by any ecclesiastical or corporation sole for the purpose of this Act, and the purchase-money to be paid shall not exceed the sum of twenty pounds, the same be retained by the party conveying for his own benefit, but when it shall exceed the sum of twenty pounds it shall be applied for the benefit of the said corporation in such manner as the bishop in whose *diocese* such land shall be situated shall, by writing under his hand, to be registered in the registry of his *diocese*, direct and appoint, but no person purchasing such land for the purpose aforesaid shall be required to see to the due application of any such purchase-money.

17. Application of parts 8 and 9 of Vict., C. 18 : In cases not otherwise provided for in this Act, the clauses sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four, and seventy-eight of the Land Clauses Consolidation Act, 1845, being the eight and ninth Victoria, chapter eighteen, shall apply in respect of the application of the purchase-money of all sites purchased from incapacitated persons, corporations, and trustees, hereby empowered to sell, other than the chancellor and council of the duchy of Lancaster and the officers of the duchy of Cornwall.

18. Trustees may sell or exchange lands or buildings or may let : If it shall be deemed advisable to sell any land or building not previously part of the possessions of the duchy of Lancaster or Cornwall held in trust for any institution, or to exchange the same for any other site, the trustees in whom the legal estate in the said land or building shall be vested may, by the direction or with the consent of the governing body of the said institution, if any such there be, sell the said land or building, or part thereof, or exchange the same for other land or building suitable for the purposes of their trust and receive on any exchange any sum of money by way of affecting an equality, and apply the money arising from such sale or given on such exchange in the purchase of another site, or in the improvement of other premises used or to be used for the

purposes of such trust ; and such trustees may, with like direction or consent, let portions of the premises belonging to the institution not required for the purpose thereof, for such term and under such covenants or agreements as shall be deemed by such governing body to be expedient, and apply the rents thereof to the benefits of the institution.

19. Trustees to be indemnified from charges ; in default thereof empowered to mortgage or sell the premises : The trustees of such institution who, by reason of their being the legal owner of the building or premises, shall become liable to payment of any rate, charge, costs or expenses shall be indemnified and kept harmless by the governing body thereof from the same, and in default of such indemnity shall be entitled to hold the said building or premises and other property vested in them as a security for their reimbursement and indemnification, and, if necessity shall arise, may mortgage or sell the same, or part thereof, free from the trusts of the institution, and apply the amount obtained by such mortgage or sale to their reimbursement, and the balance (of any) to the benefit of the institution, subject to the restrictions herebefore contained with regard to lands given and lands belonging to the duchies aforesaid.

20. Property of institution how to be vested : Where any institution shall be incorporated, and have no provision applicable to the personal property of such institution, and in all cases where the institution shall not be incorporated, the money, securities for money, goods, chattels, and personal effects belonging to the said institution, and not vested in trustees, shall be deemed to be vested for the time being in the governing body of such institution, and in all proceedings, civil and criminal, may be described as the money, securities, goods, chattels, and effects of the governing body of such institution by their proper title.

21. How suits by and against institutions to be brought : Any institution incorporated which shall not be entitled to sue and be sued by any corporate name, and every institution not incorporated, may sue or be sued in the name of the president, chairman, principal secretary or clerk, as shall be determined by the rules and regulations, of the institution, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion : provided that it shall be competent for any person having a claim or demand against the institution to sue the

president or chairman thereof, if, no application to the governing body, some other officer or person be not nominated to be the defendant.

22. Suits not to abate or discontinue : No suit or proceedings in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

23. How judgment is enforced against : If a judgment shall be recovered against the person or officer named on behalf of the institution, such judgment shall not be put in force against the goods, chattels, or lands, or against the body of such person or officer, but against the property of the institution, and a writ of revivor shall be issued setting forth the judgment recovered, the fact of party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the institution only, and requiring to have the judgment enforced against the property of the institution.

24. Institution may make bye-law to be enforced : In any institution the governing body, if not otherwise legally empowered to do so, may, at any meeting specially convened according to its regulations, make any bye-law for the better governing of the institution, its members or officers, and for the furtherance of its purpose and object, and may impose a reasonable pecuniary penalty for the breach thereof, which accrued, may be recovered in any local Court of the district wherein the defendant shall inhabit or the institution shall be instituted shall be situated, as the governing body thereof shall deem expedient, provided always, that no pecuniary penalty imposed by any bye-law for the breach thereof shall be recoverable unless the bye-law shall have been confirmed by the votes of three-fifths of the members present at a meeting specially convened for the purpose.

25. Members liable to be sued as strangers : Any member who may be in arrear of his subscription according to the rules of the institution, or may be or shall possess himself of or detain any property of the institution in a manner or for a time contrary to such rules, or shall injure or destroy the property of the institution, may be used in the manner herebefore provided ; but if the defendant shall be successful in any action or other proceeding at the instance of the institution, and shall

be adjudged to recover his costs, he may elect to proceed to recover the same from the officer on whose name the suit shall be brought or from the institution, and in the latter case shall have process against the property of the said institution in the manner above described.

26. Members guilty of offences punishable as strangers: Any member of the institution who shall steal, purloin or embezzle the money, securities for money, goods and chattels of the institution, or wilfully and maliciously, or wilfully and unlawfully, destroy or injure the property of such institution; or shall forge any deed, bond, security for money, receipt or other instrument, whereby the funds of the institution may be exposed to loss, shall be subject to the same prosecution, and if convicted shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

27. Institutions enable to alter, extend, or abridge their purposes: Whenever it shall appear to the governing body of any institution (not having a royal charter, nor established by not acting under any act of parliament), which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose, or to amalgamate such institution or institutions, either wholly or partially, with any other institution or institutions such governing body may submit the proposition to their members in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the institution; but no such proposition shall be carried into effect unless such report have been delivered or sent by post to every member ten days previous to the special meeting convened by the governing body for the consideration thereof nor unless such proposition shall have been agreed to by the votes of three-fifths of the members present at such meeting, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

28. Power to board of trade to suspend such alteration, if applied to by two-fifth dissentients: If any members of the institution, being not less than two-fifths in number, consider that the proposition so carried is calculated to prove injurious to the institution, they may within three months after the confirmation thereof, make application in writing to the lords of the committee of Her Majesty's Privy Council for trade and foreign plantations, who at their discretion

shall entertain the application; and if, after due inquiry, they shall decide that the proposition is then calculated to prove injurious to the institution, the same shall not be then not carried into effect; but such decision shall not prevent the members of such institution from reconsidering the same proposition on a future occasion.

29. Provision for the dissolution of institutions and adjustment of their affairs: Any number not less than three-fifths of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal of and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution, applicable thereto, if any, and if not, then as the governing body shall find expedient; provided that in the event of any dispute arising among the said governing body, or the members of the institution the adjustment of its affairs shall be referred to the judge of the Court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or if he find it necessary, shall direct that proceedings shall be taken in the Court of Chancery for the adjustment of the affairs of the institution.

30. Upon a dissolution, no member to receive profit—Proviso for joint stock companies: If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said institution or any of them, but shall be given to some other institution, to be determined by the members at the time of the dissolution, or in default thereof by the judge of the county Court aforesaid; provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of the shareholders in the nature of a joint-stock company.

31. Who is a member: For the purposes of this Act, a member of an institution shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose current subscription shall be in arrear at the time.

32. The governing body defined : The governing body of the institution shall be the council, directors, committee, or other body to whom by act of parliament, charter, or the rules and regulations of the institution, the management of its affairs is interested ; and if no such body shall have been constituted on the establishment of the institution, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the institution thenceforth.

33. To what institutions the Act shall apply : The Act shall apply to every institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs : provided that the royal institution, and the London institution for the advancement of literature and diffusion of useful knowledge shall be exempt from the operation of this Act.

34. Parish defined : The term "parish" shall signify herein any place separately maintaining its own power.

35. Short title of the Act : In all deeds, documents, proceedings, suits, and prosecutions this Act may be cited and described by the name of "The Literary and Scientific Institutions Act, 1854".
