

# Unincorporated Associations--Labor Unions-- Liability for Defamation (Martin v. Curran, 303 N.Y. 276 (1951))

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defendant could not assume that he need make no explanation for the injury on his premises, nor could he avoid liability by relying on his trust in the manufacturer, or on the absence of a contract with the customer.<sup>20</sup>

The Court apparently realized the plaintiff's difficulty in establishing his *prima facie* case in these situations, and extended the doctrine of *res ipsa loquitur* in an attempt to achieve an equitable result. As a result, a customer stands a better chance of getting compensated for his injuries; but, by the same token, a heavier burden is cast upon the retailer. The local grocer, under this rule, has a greater duty to inspect articles purchased for resale, a duty so strict that, perhaps, he has become an insurer of the safety of those who enter his store.



UNINCORPORATED ASSOCIATIONS—LABOR UNIONS—LIABILITY FOR DEFAMATION.—Plaintiff brought an action against defendants individually and in their representative capacities as officers of a labor union (the latter action pursuant to statute),<sup>1</sup> for damages resulting from the publication of libelous material in the union newspaper. The complaint did not allege that the individual members of the union had authorized the tort. The lower court denied a motion to dismiss the complaint against the defendants as individuals, but granted the motion to dismiss it as against defendants in their representative capacities. The Court of Appeals affirmed, and *held* that the statute is procedural in nature and does not change the substantive liability of the individual members which must be shown before the action may be brought against the association officers. *Martin v. Curran*, 303 N. Y. 276, 101 N. E. 2d 683 (1951).

Courts have long taken cognizance of the common law rule that an unincorporated association has no legal existence apart from that of its members,<sup>2</sup> and, in the absence of a statute to the contrary, cannot be sued as a separate entity.<sup>3</sup> Its tort liability, therefore, is predi-

<sup>20</sup> *Day v. Grand Union Co.*, 280 App. Div. 253, 255, 113 N. Y. S. 2d 436, 438 (3d Dep't 1952).

<sup>1</sup> N. Y. GEN. ASS'N LAW § 13.

<sup>2</sup> See *Karges Furniture Co. v. Amalgamated W.L.U. No. 131*, 165 Ind. 421, 75 N. E. 877, 878 (1905); *St. Paul Typothetae v. St. Paul Bookbinders' Union No. 37*, 94 Minn. 351, 102 N. W. 725, 727 (1905); see Fahy, *The Union in Court*, 37 ILL. BAR J. 203 (1949).

<sup>3</sup> *St. Paul Typothetae v. St. Paul Bookbinders' Union No. 37*, *supra* note 2; see *Saxer v. Democratic County Committee of Erie Co.*, 161 Misc. 35, 37, 291 N. Y. Supp. 18, 21 (Sup. Ct. 1936); *Williams v. United Mine Workers of America*, 294 Ky. 520, 172 S. W. 2d 202, 204 (1943), *aff'd*, 298 Ky. 117, 182 S. W. 2d 237 (1944); *Pearson v. Anderburg*, 28 Utah 495, 80 Pac. 307, 309 (1905).

cated upon the individual liability of each of its members.<sup>4</sup> This liability may arise in several ways: it may be "a public act of the association itself . . . [or] acts of officers, agents, or members of the association where such acts are known to the membership and actively or passively approved."<sup>5</sup>

It is upon principles of agency, then, that the members of an association may be made to answer for a tortious act committed in its name.<sup>6</sup> The mere fact of membership is insufficient to establish their liability;<sup>7</sup> it is necessary that there be some act of assent or ratification,<sup>8</sup> express or implied.<sup>9</sup>

Since, at common law, a suit against the members of an unincorporated association could be brought only in the names of those members,<sup>10</sup> and it was necessary to enforce any judgment obtained against them individually,<sup>11</sup> statutes were enacted in many jurisdictions to facilitate the prosecution of such actions.<sup>12</sup> The New York General Associations Law<sup>13</sup> permits an action to be brought against the president or treasurer of an unincorporated association in his representative capacity, and further directs that any judgment obtained must be satisfied out of the association assets<sup>14</sup> before the individual members may be sued.<sup>15</sup> The *sine qua non* of this statute is that the cause of action be one which can be maintained against each of the members.<sup>16</sup>

<sup>4</sup> *Feinberg v. Basson*, 5 N. Y. S. 2d 809 (Sup. Ct. 1938); see *Rourke v. Elk Drug Co.*, 75 App. Div. 145, 147, 77 N. Y. Supp. 373, 374 (3d Dep't 1902).

<sup>5</sup> *Tannenbaum v. Hofbauer*, 142 Misc. 120, 121, 253 N. Y. Supp. 90, 92 (Sup. Ct. 1931).

<sup>6</sup> *Pandolfo v. Bank of Benson*, 273 Fed. 48 (9th Cir. 1921); cf. *Lamm v. Stoen*, 226 Iowa 622, 284 N. W. 465, 467 (1939).

<sup>7</sup> *Feldman v. North British & Mercantile Ins. Co.*, 137 F. 2d 266 (4th Cir. 1943); *Sweetman v. Barrows*, 263 Mass. 349, 161 N. E. 272 (1928); see *Malloy v. Carroll*, 287 Mass. 376, 191 N. E. 661, 667 (1934).

<sup>8</sup> See *Sizer v. Daniels*, 66 Barb. 426 (N. Y. 1873). "A part of the members of a voluntary organization cannot bind the others without their consent before the act which it is claimed binds them is done, or they, with full knowledge of the facts, ratify and adopt it." *Id.* at 432.

<sup>9</sup> *Pandolfo v. Bank of Benson*, *supra* note 6.

<sup>10</sup> *Karges Furniture Co. v. Amalgamated W.L.U.* No. 131, 165 Ind. 421, 75 N. E. 877 (1905); cf. *Kirkman v. Westchester Newspapers, Inc.*, 261 App. Div. 181, 183, 24 N. Y. S. 2d 860, 862 (1st Dep't 1941), *aff'd in part*, 287 N. Y. 373, 39 N. E. 2d 919 (1942).

<sup>11</sup> Cf. *Kirkman v. Westchester Newspapers, Inc.*, *supra* note 10 at 183, 24 N. Y. S. 2d at 862.

<sup>12</sup> ARIZ. CODE ANN. § 21-305(3) (1939); COMP. LAWS OF MICH. § 613.29 (1948); N. Y. GEN. ASS'N LAW § 13 (1952); R. I. GEN. LAWS c. 530, § 1 (1938).

<sup>13</sup> N. Y. GEN. ASS'N LAW § 13; see PRASHKER, NEW YORK PRACTICE 78 (2d ed. 1951).

<sup>14</sup> N. Y. GEN. ASS'N LAW § 15.

<sup>15</sup> *Id.* § 16.

<sup>16</sup> *Id.* § 13. "An action or special proceeding may be maintained, against the president or treasurer of such an association . . . upon any cause of action,

With the development of the labor movement, workers organized into large, unincorporated associations with memberships reaching into the thousands. It consequently has become, as a practical matter, an almost insurmountable task to attempt to prove the individual liability of each of these members for acts performed in the association name,<sup>17</sup> since many members may have no knowledge of the act or even of the appointment of an agent. In the words of Chief Justice Taft, "[t]o remand persons injured to a suit against each of the . . . members to recover damages . . . would be to leave them remediless."<sup>18</sup>

The practical result of such a situation is manifestly inconsistent with Anglo-American principles of justice, which attempt to provide a remedy for every wrong.<sup>19</sup> If the plaintiff is unable to prove the liability of every member, the association may not be sued pursuant to Section 13 of the General Associations Law, and should the tortfeasor be judgment proof, there can be no recovery.

Large trade unions resemble corporations in many respects, exercising many of the same rights and privileges,<sup>20</sup> and their obligations should likewise be those of a corporation.<sup>21</sup> The federal courts, recognizing that an unincorporated association ought to be suable as a separate legal entity,<sup>22</sup> permit an action to be brought against

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*for or upon which the plaintiff may maintain such an action . . . against all the associates . . .*" (emphasis added). See *McCabe v. Goodfellow*, 133 N. Y. 89, 92, 30 N. E. 728, 729 (1892).

<sup>17</sup> See *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 387 (1922).

<sup>18</sup> *Id.* at 389.

<sup>19</sup> Consider the common law maxim, *ubi jus ibi remedium*, as discussed in *Henry v. Cherry & Webb*, 30 R. I. 13, 73 Atl. 97, 101 (1909), and *Pavesich v. New England Life Ins. Co.*, 122 Ga. 199, 50 S. E. 68, 69 (1905). *Equity will not suffer a wrong without a remedy* is the application of this principle to equity jurisdiction. 2 POMEROY, *EQUITY JURISPRUDENCE* 185 (5th ed. 1941). The trend today is toward a broader responsibility for tort in other fields. See McNiece and Thornton, *Is the Law of Negligence Obsolete?*, 26 ST. JOHN'S L. REV. 255, 260 (1952), ". . . [T]here has been a positive trend towards the extension of liability for negligence and the restriction of defenses . . . ."

<sup>20</sup> See *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 385 (1921). Compare 1 BL. COMM. \*475, \*476 ("After a corporation is so formed and named, it acquires many powers, rights, capacities, and incapacities, which we are next to consider . . . As, 1. To have perpetual succession . . . 2. To sue or be sued . . . 3. To purchase lands, and hold them, for the benefit of themselves and their successors . . . 4. To have a common seal . . . 5. To make by-laws or private statutes for the better government of the corporation . . ."), with Witmer, *Trade Union Liability: The Problem of the Unincorporated Corporation*, 51 YALE L. J. 40 (1941) (" . . . [T]rade unions . . . frequently make use of a common seal. In fact they have as perpetual an existence and as perpetual a succession of interests as the corporation. Actually they own property even though to do so they may have to employ trustees. And it cannot be denied that they make by-laws 'or

such an organization, where the enforcement of a substantive right under the United States Constitution is involved.<sup>23</sup> The English courts have taken a similar view and have held that a union may be sued in its registered name.<sup>24</sup>

It is submitted that the law as it stands today in New York is inequitable. An organization the size of a labor union, which occupies such an important place in our economy, should be made to answer for tortious acts committed in its name, without being permitted to raise, as a condition precedent to its liability, the establishment of the individual responsibility of each of its members. If the courts in their capacity as interpreters of the law feel it impossible so to construe the statute as it presently exists, it would seem desirable that the law be changed.



WILLS — ADMINISTRATOR C.T.A. — WHO MAY QUALIFY. — Testator had named his widow sole beneficiary and executrix. Prior to probate of the will, his widow died, naming a bank her executor. The bank, however, declined to administer testator's estate. Testator's sister, claiming to be his next of kin within the meaning of the Surrogate's Court Act, although not entitled to share in his estate,<sup>1</sup> petitioned for letters of administration c.t.a.<sup>2</sup> In denying

private statutes for the better government of the corporation' . . . . Yet these associations lack that first indicium of corporateness, a charter. They cannot, in most jurisdictions, be sued in their own names." )

<sup>21</sup> See *United Mine Workers v. Coronado Coal Co.*, *supra* note 20 at 388. "It would be unfortunate if an organization with as great power as this International Union has . . . in a wide territory . . . could assemble its assets to be used . . . free from liability for injuries [resulting from their] . . . torts . . ."

<sup>22</sup> *United Mine Workers v. Coronado Coal Co.*, *supra* note 20; see Fahy, *supra* note 2.

<sup>23</sup> FED. R. CIV. P. 17(b).

<sup>24</sup> *Taff Vale Ry. v. Amalgamated Society of Ry. Servants*, [1901] A. C. 426. In 1906, the Trades Disputes Act was passed, providing that "(1) An action against a trade union . . . or against any members or officials thereof . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

"(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871 . . . except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute." *Trades Disputes Act, 1906*, 6 Edw. VII, c. 47, § 4. See cases construing this statute cited in Note, 27 A. L. R. 786, 797 (1923).

<sup>1</sup> N. Y. DEC. EST. LAW § 83(4). Since the estate was valued at less than \$10,000.00, decedent's sister was not entitled to participate under this statute.

<sup>2</sup> An administrator c.t.a. (*i.e.*, with the will annexed) is a person appointed