

**THE HIGH COURT**

[2021] IEHC 736

**[Record No. 2020/2253 P]**

**BETWEEN**

**JOSEPH CONNOLLY**

**PLAINTIFF**

**AND**

**DERMOT O'CONNOR**

**DEFENDANT**

**Judgment of Mr Justice Barr delivered *ex tempore* on 24th November, 2021.**

**Introduction.**

1. The substantive proceedings in this case arise out of an accident that occurred on 5th February, 2018 at 00.15 hours. On that occasion, the plaintiff was on the premises of Tolka Rovers AFC & Sports Club in Dublin. In the company of his wife, he had attended at the bar in the clubhouse and had consumed approximately 4 pints of beer. It is the plaintiff's case, that he left the bar to retrieve something from his car, which was in the car park. As he was walking on the pavement at the side of the clubhouse, he fell to the ground due to the fact that the pavement came to an abrupt end at the corner of the building and dropped down a number of inches.
2. As a result of falling to the ground the plaintiff suffered injury to his right shoulder. He suffered an anterior dislocation of the shoulder and extension of a previously existing rotator cuff tear in the shoulder. This was a serious injury because some months later, on 23 November 2018, the plaintiff had to undergo a right reverse total shoulder replacement operation. He experienced severe disablement in all aspects of his life after the accident. The plaintiff is currently 72 years of age, having been born on 9 May 1949.
3. In a personal injuries summons issued on 23rd March, 2020, in which the defendant has been named as a representative of the club, the plaintiff has claimed damages from the club due to the alleged negligence of it as occupier of the premises; in particular, for allowing the locus to be in an unsafe and dangerous condition and for failing to provide any, or any adequate, lighting at the locus.
4. The defendant on behalf of the club, has entered a full defence to the action, in which it has denied that the locus was in an unsafe and dangerous condition, either in the manner alleged or at all. Without prejudice to that contention, the defendant has also pleaded that if the accident occurred in the manner alleged by the plaintiff, it was caused or contributed to, by the failure of the plaintiff to take reasonable care for his own safety and in particular, for failure to watch where he was walking.
5. The defendant has also raised the issue that the plaintiff was a member of the club and in such circumstances he is estopped from maintaining the action.
6. This judgment concerns the trial of a preliminary point of law, specifically whether the plaintiff was a member of the club on the date when he met with his accident.

**Agreed Statement of Facts.**

7. For the purposes of the present application, wherein the defendant seeks an order from the court dismissing the plaintiff's action on the ground that it is not maintainable by the plaintiff against the defendant, due to the fact that he was a member of the club at the time of the accident, the parties have agreed that the court can proceed on the following factual basis:
- i. For the purposes of the present application, it is accepted that the plaintiff had an accident on the grounds of the club on 5th February, 2018.
  - ii. The plaintiff was lawfully on the club premises at the time of the alleged incident the subject matter of the proceedings.
  - iii. On the date of the accident Tolka Rovers AFC and Sports Club was an unincorporated club and the defendant was secretary of the club and is sued in that capacity as a nominee of the club.
  - iv. There is no provision in the rules of the club for and relating to the category of associate member. In particular, there is no provision in the rules of the club providing for and relating to the category of "Associate Member – Bar".
  - v. The rules of the club do not distinguish between different categories of membership. The rules require that a subscription be paid by members by 31st October of each year.
  - vi. On 5th February, 2018, the roll of membership of the club was that exhibited to the affidavit sworn by the defendant on 26th January, 2021.
  - vii. The role of membership of the club for the period covering the date of the accident, records that the plaintiff was a fully paid-up associate member of the club, having paid his subscription for the years 2016/2017 and 2017/2018 by the date required under the rules of the club.

**Submissions on Behalf of the Defendant.**

8. Counsel on behalf of the defendant, Ms Brenda Power BL, accepted that there was no explicit category of associate members provided for in the rules of the club. The rules only referred to "full members" and "ordinary members", without defining what was meant by these terms.
9. It was submitted that the key evidence, which in essence was not disputed by the plaintiff, was that he had been admitted as an associate member of the club from in or about 2016. The roll of members, which had been exhibited in the defendant's affidavit, recorded the plaintiff as being member number 667. His address was given and his membership type was specified as being "associate" and the relevant sports section in the club was stated to be "bar". The roll of members also recorded that he had paid an annual subscription of €15 for the years 2016/2017 and 2017/2018. It was also noteworthy that the plaintiff's wife was recorded in the roll of members as being member number 668 on the same terms as her husband.

10. Counsel submitted that it was accepted by the plaintiff that when he became a member of the club he had received a membership card, which he had to produce when ordering drinks at the bar. That card showed that he was a member and also entitled him to a discount in relation to the price of drink purchased at the bar. It was also accepted by the plaintiff that he used to attend at the bar regularly on Sunday evenings, when socialising with his wife and others.
11. From the roll of members exhibited in the affidavit sworn by Mr O'Connor, it could be seen that of a total recorded membership of 278 members, 104 thereof were listed as "associate". There were eight different activities available to both "associate" and "full" members, being: badminton, bowls, schoolboys soccer, soccer, football, flyers and bar. Some 28 of the members participated only in badminton either as full or associate members. There were 47 members in the bowls section. Four members participated in schoolboy soccer, while 7 members described as both full and associate, played soccer or football. There was just one full member listed under the section "flyers".
12. Counsel submitted that it was clear from the roll of members that the various categories of associate membership were accepted by the membership at large and indeed accounted for a very significant proportion of the total membership of the club.
13. Counsel further submitted that it had been made clear in various decisions of the Irish courts that the key determining factor in whether a person was a member of a club, was not the issue of whether certain formalities had been complied with, such as posting the proposed members name on a board, or recording that in the minutes kept by the committee, but whether the person concerned had in fact gone through the membership process, had been accepted as a member, had paid his subscription and had participated in the activities of the club, or used the facilities available in the club. It was submitted that the plaintiff had complied with all of these relevant criteria. In support of the submission that payment of the annual subscription was the key determining factor, counsel referred to the decisions in *Dunne v Mahon* [2014] IESC 24; *Walsh v Butler* [1997] 2 ILRM 81 and *McGroarty v Kilcullen* [2021] IEHC 679.
14. In relation to the proper interpretation of the rules of a club, counsel referred to the principles set down by Clarke J. (as he then was) in the Dunne case, where he stated that the rules must be interpreted under the principle of "text in context", which meant that they must be interpreted in a commonsense and realistic way, rather than in a strict legalistic way. It was submitted that if the court were to adopt that approach, it could have regard to the fact that there was no explicit prohibition in the rules of the club preventing the creation of a category of "associate members".
15. It was submitted that the court was entitled to have regard to the fact that there were many such associate members of the club, of which the plaintiff was one and these members had been accepted by the club, had paid their subscription in the usual way and had participated in the activities and used the facilities in the club. It was submitted that in these circumstances the court should adopt a commonsense approach to the issue and hold that the plaintiff was a member of the club at the relevant time.

16. In support of her submission that the conduct of a party could indicate their acceptance of the terms of a contract, counsel referred to the 8th edition of Contract Law in Ireland by Robert Clark, where the learned author had stated as follows: "*A person may be bound by his conduct if, objectively speaking, that person conducts himself or herself in such a way that the conduct would indicate to a reasonable person that he or she intends to be bound.*" Counsel submitted that in this case, the conduct of the plaintiff in attending at the bar in the club premises on a regular basis on a Sunday evening, clearly indicated that he regarded himself as a member of the club. The fact that he paid his membership each year before the due date, further indicated that he was complying with the obligations of membership of the club.
17. In relation to the capacity of the committee to create alternative categories of membership, counsel referred to the final sentence of clause 5 (b) of the rules which dealt with the committee of management of the club; which provided "Only full members contributing to the past four years will be eligible for appointment to the committee of management". Counsel submitted that by implication, this provision in the rules clearly anticipated that there could be other categories of members of the club, who would not be eligible for appointment to the committee of management.
18. In summary, counsel submitted that in the present case, the defendant had established a universally accepted departure from the formalities regarding membership in the rules, in particular those requiring that the name of the person proposed for election to membership be posted on the board in the clubhouse and that the subsequent election by the committee of management be recorded. It was submitted that where the primary requirement of election by the committee of management had been fulfilled; such departure from the strict terms of the rules amounted to nothing more than "play in the joints" of an amateur club's rules. It was submitted that there was, however, no ambiguity about the requirement of the member to pay a subscription by a specified date, nor about the consequences of a failure to pay the subscription by that date, being a termination of membership. In the present case, the essential point was that the plaintiff had accepted that he was a member of the club and had paid his subscription on time each year.
19. It was submitted that in these circumstances, any reasonable person looking at the situation that existed in February 2018 and applying common sense to the interpretation of that situation, would have to hold that the plaintiff had been a member of the club at the relevant time and the plaintiff regarded himself as such. It was submitted that in these circumstances, the court should make the order sought by the defendant declaring that the plaintiff was a member of the club at the time of the accident and was therefore estopped from maintaining his proceedings against the club.

**Submissions on Behalf of the Plaintiff.**

20. Counsel for the plaintiff, Mr Niall Beirne SC, submitted that what the defendant was trying to do in this application, was to shut out a badly injured plaintiff from maintaining his claim to damages by relying on a category of membership that simply did not exist under the rules.

21. Counsel pointed out that it had been accepted that there was no provision for associate members in the rules of the club. The rules themselves provided for their amendment in rule 29, which provided that the rules could be amended at a general or special meeting convened by the committee for the purpose of amending the rules and the amendment would be made if two thirds of the members present and voting at the meeting voted in favour of amending the rules. It was submitted that if the management committee had wanted to make provision for additional categories of membership, they could have done so by convening the requisite meeting of the members and putting a proposal to them that the rules should be changed and if that proposal had been carried by the necessary majority, the rules would have been amended; however, that had not been done.
22. Instead, the committee had attempted to rely on some ad hoc procedure which they had adopted and which was totally outside the rules of the club. It was submitted that insofar as a members club was concerned, it was in essence a contract between the members inter se, which was based on the rules of the club. It was to those rules that the members could look to understand what their rights and obligations were in relation to the other members of the club.
23. It was submitted that in the Dunne case, the Supreme Court had held that it was not possible to simply wind up the club on the basis that that might have been something which was sensible, due to the fact that there was no provision for that in the rules. Similarly, it was submitted that in both the Walsh and McGroarty cases the court had rejected the notion that in each case some ad hoc practice, which provided that certain people who had not paid their subscription could be regarded as members, could be used to override the explicit provisions of the rules themselves.
24. Counsel referred to the provisions of the rules in the club, which provided that where a person was proposed for membership this had to be done by a proposer and seconder, each of whom had to be ordinary members of the club. The rules also provided that the names and addresses of persons proposed as ordinary members of the club had to be displayed in a conspicuous place in the club premises for at least a week before their election. The rules further provided that an interval of not less than two weeks had to elapse between nomination and election of ordinary members. The rules further provided that new members were to be elected by the committee of management of the club. When the plaintiff's solicitor had requested evidence that the plaintiff's name had been placed in a conspicuous place in the club as required by the rules and had requested sight of the minutes recording his election by the committee of management, none of that information had been forthcoming. In short, there was no evidence that the plaintiff had been elected as an ordinary member of the club in the manner prescribed by the rules.
25. Instead, the defendant purported to rely on the roll of members for the relevant years, which recorded that the plaintiff was an "associate member – bar". This was a category of membership unknown to the rules. It was submitted that the committee did not have authority to establish such a category of membership. They could not amend the rules and create categories of membership willy-nilly, without any designation of the rights or

obligations of such members and without those categories of membership being properly incorporated into the rules by means of the amendment of the rules as provided under rule 29.

26. Counsel referred to statements in the judgments of Morris J. in the Walsh case and Hyland J. in the McGroarty case, to the effect that a committee of a club cannot ignore the rules, even where it thinks that it is in the best interests of the club to do so and similarly, the court cannot be invited to proceed on the basis that it should ignore the rules of the club.
27. In these circumstances, it was submitted that the plaintiff was not a full member, or an ordinary member, as provided for under the rules. Therefore he was not in fact a member of the club at the time that he met with his accident. Accordingly it was submitted that there was no bar to him instituting the proceedings against the club as occupier of the premises.

**The Rules of the Club.**

28. It is necessary to set out a brief summary of some of the salient provisions of the rules of the club. As already noted, rule 8 provides that the names and addresses of persons proposed as ordinary members of the club must be displayed in a conspicuous place in the club for a period of at least a week before their election. Rule 9 provides that applicants for membership shall be proposed by one ordinary member and seconded by one ordinary member. New members shall be elected by the committee of management.
29. Rule 14 provides that when a candidate for election to membership has been duly elected in accordance with the rules, the honorary secretary of the club shall notify him and furnish him with a copy of the rules of the club in force at the time and shall request him to pay the appropriate subscription for the current year. The rule provides that until the subscription is paid, the person so elected shall not be entitled to the benefits or privileges of the club. Rule 15 provides that any member intending to resign his membership of the club, must notify his wish to resign in writing to the honorary secretary on or before 31st October in any year, otherwise he shall be liable for his renewal subscription to the club for the ensuing year.
30. Rule 21 provides that the honorary secretary shall keep a roll of membership of the club duly entered up with the names and addresses correctly written therein. The honorary secretary shall enter up all the minutes of all general meetings and committee of management meetings and shall produce same at the appropriate occasions.
31. Rule 29 provides for amendment of the rules. It provides that the club shall have power at a general, or special meeting convened by the committee for that purpose, by vote of two thirds of the members present thereat and voting to rescind or amend the rules. It provides that special propositions by members to alter the rules must be handed to the secretary one month prior to the general meeting.

32. Finally, rule 31 provides "The committee of management have power to deal with any matter not provided for in the foregoing rules."

**Conclusions.**

33. It will be helpful to begin by looking at some of the general principles of law applicable to clubs. As was stated by Clarke J. (as he then was) in the Dunne case, the principal legal basis for the existence of a club is a contract between all of the members for the time being. As an unincorporated association of individuals, a club has no separate legal personality. However, that is not to say that the club does not have some form of legal existence. So long as the contract between its members stays in being, then it can reasonably said that the club continues to exist (see paragraph 5.1 of the judgment).
34. Later in the same judgment, Clarke J. stated that as the primary legal basis for the existence of the club is a mutual contract between all of the members for the time being, it follows that the nature of the legal status of the club and actions taken by its members in the context of their membership of the club requires an analysis of that contract. That contract will, ordinarily be found in the rules.
35. In relation to the interpretation of the rules of a club, Clarke J. stated as follows at paragraph 5.5:

*"It has often been said that the modern approach to the construction of all documents which have an effect on legal rights and obligations is to analyse the text of the document but in its proper context by reference to the so-called factual matrix within which the document was produced. It seems to me that this "text in context" approach applies across the board to all documents designed to affect legal relations. However, part of the "context" in which the "text" is to be viewed is the nature of the document itself. As was pointed out by Lord Hoffmann in Investors Compensation Scheme Ltd v West Bromwich Building Society (1981) 1 WLR 896, we do not, for example, expect mistakes to have been made in carefully drafted contracts. Likewise, we expect statutes to mean what they appear to say. On the other hand, there is authority for the proposition that the rules of the club should not be approached with the same degree of rigour. In In Re GKN Bolts and Nuts Limited Sports and Social Club (1982) 1 WLR 774 at P. 776, Megarry VC observed:*

*'In such cases the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not of course saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.'*"

36. Later in the judgment at para 6.3, Clarke J. dealt with the issue of the alteration of the rules of a club. He stated that the starting point of any analysis had to be that, prima facie, the rules, representing as they do a contract between all of the members, cannot be altered except by agreement of all those members, or in accordance with the specific provision in the rules allowing for such amendment. He went on to state as follows:

*"When people join a club they are committing both their efforts (whether great or small) and their resources (whether great or small) to the club on the basis of the rules as they then exist. They are entitled to have those rules applied and not to have the rules changed without their agreement (or in accordance with an amendment procedure which is to be found in the rules and to which they must be taken to have signed up by joining the club with such an amendment procedure)."*

37. While a court can and should adopt a commonsense and realistic approach to the interpretation of the rules of a club, it cannot ignore the rules. In the Walsh case, the issue arose as to whether the plaintiff was a member of the rugby club due to the fact that, while he had not paid his subscription as required under the rules, he was nevertheless regarded as being a member of the club and was not required to comply with the usual requirement to pay the subscription. Morris J. held that the informal practice that had been adopted by the committee of the club in regarding the plaintiff as a member, was outside the ambit of the rules and was therefore not permissible. He stated as follows in this regard:

*"It is in my view clear beyond doubt that the only route by which one may join the club is by election by the general committee. To hold otherwise would give rise to a situation where the committee of the club would have lost all control over affairs of the club. Members could be assumed into the club and shed from the club without the knowledge of the general committee. The contractual relationship is between members regulated by their acceptance of the general committee as the regulating authority would be varied without their approval and consent."*

38. The judge held that whatever the status of the plaintiff might have been from the time that he commenced to play rugby with the club in the season 1982/1983 up to the time when he had the accident as alleged in the proceedings, it was not that of a member of Bandon RFC.

39. A similar view was taken by Hyland J. in the McGroarty case, where she had to consider whether the informal practice of allowing the plaintiff, who was a very talented golfer, to be a member of the club without going through the normal procedures required under the rules, was valid; she stated as follows at paras 64 and 65:

*"64. In substance, I am being asked to ignore the rules because the club ignored its own rules. But there is no evidence whatsoever in this case that the members had agreed to ignore the club rules enshrined in the club constitution in relation to subscriptions and had decided instead to replace it with whatever the current practice on subscriptions was from time to time. Nor has any authority been cited*



*to suggest that the club is entitled to ignore its own rules in the absence of a decision by the members to take such a step. Such an approach would be contrary to the disavowal in Dunne of any principle of implicit amendment of club rules.*

65. *Further, it is worth observing that any such approach would have serious consequences for the club. To accept this argument would mean that the way of ascertaining the rules on subscriptions in the club would be to identify current practice. Current practice may vary from member to member, from year to year, and from committee to committee. There would be an entire lack of certainty as to the rules of the club in relation to subscription payments and members would be left in a position of complete uncertainty as to their rights and obligations in this regard. It would also undermine the club's ability to enforce its extant rules on subscriptions, thus preventing it from restricting non-paying members from playing in competitions, from using the facilities of the club, and from excluding them for non-payment. This would clearly be a highly unsatisfactory situation for the club."*

40. Turning to the facts of this case, the defendant has not tried to explain the introduction of the categories of associate membership, which was apparently introduced by the management committee at some unknown date and for some unknown reason.

41. In relation to the election of the plaintiff to this class of membership, the defendant described that procedure in the following way in his affidavit sworn on 28th October, 2021:

*"I say that membership procedures in respect of all members, both associate and full, are conducted in the same fashion. As set out in rule 9, members are proposed by one ordinary member and seconded by another ordinary member, and thereafter elected by the committee of management. This process is conducted orally, when the proposing and seconding members speak the name of the proposed member to the committee meeting, and the vote is then taken. The rules do not require that this process be conducted or recorded in writing, nor that the date of election, nor the identity of proposers and seconders be noted. I say that it is only when a member is being elected to the executive committee, that the names of proposed members be displayed on the club premises for at least a week before the election. This was the procedure which pertained in respect of the plaintiff's application, proposing and acceptance as a member, as for every other member of the club. No note of the meeting is generally taken, but the new members name is thereafter entered in the club roll book, along with their address, the facilities of which they are entitled to avail, their designation as "full" or "associate" member, and the annual membership fee applicable to them. "Full" membership follows automatically upon four years of "associate" membership. The club facilities, available to both "associate" and "full" members, include bowls, badminton, soccer, football and the club bar. I say and believe that the plaintiff joined the club in about 2016, as our roll records him paying subscriptions for the years 2016/2017 and*

*2017/2018. The plaintiff paid an annual membership fee of €15, and the facility of which he wished to avail was the club bar."*

42. Thus it is clear that the club has ignored the provisions of rule 8 of its rules, which requires that the name of the proposed member be displayed in a conspicuous place for at least two weeks prior to their election as a member. This requirement is in fact a statutory requirement to secure compliance with the requirements of s. 4 of the Registration of Clubs Act 1904 (as amended).
43. It would appear, although there is no evidence in relation to this aspect, that the committee of management decided at some stage to create new categories of membership, which were not provided for in the rules. The fact that the creation of such categories of membership was not explicitly prohibited in the rules, did not of itself confer any power on the committee of management to create such new categories of membership.
44. If it were the case that the committee could do any act that was not explicitly prohibited in the rules of the club, the committee would have an almost limitless power in the absence of the rules of the club reciting a very large litany of matters that the committee was prohibited from doing. If the rules were required to prohibit each and every act that the committee could not do, that would have the result that the rules of clubs would become larger than telephone directories. The better view is that the committee of management only had the powers that were given to them explicitly in the rules of the club.
45. If the committee of management wanted additional powers, and in particular, if they wished to create new categories of membership, they should have put that proposal to the members in general meeting, so that the matter could be voted on by the members and the necessary amendment made to the rules, once the required majority was in favour of the amendment as per rule 29.
46. In relation to the argument that the last sentence of rule 5 (b) implicitly recognised that there could be other categories of membership, the court does not consider that this argument has any substance. Rule 5(b) deals with the composition of the committee of management. The relevant section which was cited in support of this argument provided that only full members contributing to the past four years will be eligible for appointment to the committee of management. The court does not interpret that portion of the rule as implicitly recognising that there can be other categories of membership, other than those stipulated in the rules of the club. The court is of the view that a reasonable and literal interpretation of that sentence, is that it was merely stipulating that in order for a person to be elected as a member of the committee of management, they have to be a full member of the club for the period of four years prior to their election to the committee.
47. The court is satisfied that it is not appropriate for the committee of management to ignore the rules of the club; neither can this court do so. That being the case, I have to find that the committee did not have authority to create the categories of associate membership,

which they purported to do in some way, although that methodology has not been outlined to the court. The court has not been told of any specific resolution passed by the committee of management on a particular date to authorise the creation of these new categories of associate membership in the club.

48. The fact that the plaintiff may have accepted the associate membership that was offered to him and may have acted upon it by using the facilities of the club and by paying his subscription, is not sufficient to render the actions of the committee of management in creating that class of membership valid, when there was no provision in the rules for such categories of membership.
49. In the course of argument, counsel referred to the proposition set down by Prof Robert Clark in the 8th edition of his book "Contract Law in Ireland", wherein he stated that a person may be bound by his conduct if, objectively speaking that person conducts himself or herself in such a way that the conduct would indicate to a reasonable person that he or she intends to be bound. It has to be noted that that proposition occurs in chapter 1 of the book, which deals with the rules of offer and acceptance in relation to the creation of a binding contract. More particularly, the portion cited is to be found in paragraph 1 – 37, which is in the section dealing with acceptance of an offer. Thus, this proposition relates to the circumstances in which a party to a contract may be held to have accepted the offer made by the offeror, if he demonstrates by his conduct that he has accepted the offer.
50. In the present case, there is no doubt that the plaintiff accepted the category of associate membership of the club by his conduct in paying the required subscription and by using the facilities of the club, but that is not sufficient to render valid a category of membership, that was not valid under the rules of the club.
51. It was not argued on behalf of the defendant that rule 31 of the rules gave the committee of management the power to create new categories of membership. That rule provides that the committee of management have power to deal with any matter not provided for in the foregoing rules. As that argument was not made at the trial of the preliminary issue, it does not have to be considered by the court. But even if it had been raised, the court is of the view that that rule does not give the committee of management some all-encompassing power to do whatever they like in whatever way they like, whether or not it is in conformity with, or inconsistent with, the rules of the club. To so hold, would effectively set the rules at naught. That cannot have been the intention of the people who drafted the rules initially, or the intention of the members who adopted the original rules. The better interpretation is that this rule merely allows the committee of management to take the necessary steps in furtherance of the enforcement of the rules that are explicitly set out in the rules of the club.
52. In conclusion therefore, I find that in February 2018, the plaintiff was not a member of the club because he was not either a full member, or an ordinary member, as provided for under the rules. That the committee may have regarded him as holding some form of membership created by them, but not provided for in the rules, and that the plaintiff may

have accepted such designation, cannot convert what was in effect a nullity, into membership of the club as provided for under the rules. In short, the plaintiff was not a member of the club at the time of his accident on 5th February, 2018, because there was no such thing as associate member provided for under the rules.

53. Accordingly, the court holds that the plaintiff was not a member of the club at the time of his accident.