

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Campbell v. The Australian Mutual Provident
Society and others, from the Supreme Court
of New South Wales; delivered the 12th
May 1908.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from an order of the Supreme Court of New South Wales allowing a demurrer to a statement of claim.

The statement of claim purports to be by Campbell as Plaintiff, "on behalf of himself and " others the members (exclusive of the Directors) " of the Australian Mutual Provident Society," against the Society and certain persons Directors of the Society.

The contents of the statement of claim, so far as now material, may be briefly summarised. It alleges that the Society was originally formed under the Act 7 Vict. No. 10, and an amending Act, and that the Society was established and commenced operations in or about 1849, down to which time New South Wales included what are now known as Victoria and Queensland. It is stated that a private Act to incorporate the Society was passed by the New South Wales legislature in 1857, by which time Victoria had been separated. The Society,

as originally established, was limited, as to the scope of its operations, to what was then New South Wales. By the private Act of 1857 the Society was authorised to carry on its business "in or out of" the Colony.

It was further alleged that, in the year 1905, the Board of Directors issued a circular to the members, with reference to proposals which had been made to alter the by-laws of the Society so as to enable it to extend its business to the United Kingdom and to the British South African Colonies. The circular, as set out, contains a decided recommendation by the Directors to the members, in favour of the alteration of the by-laws and the extension of the business. It further stated the reasons upon which the Directors relied, and with the circular was sent a form of proxy, to enable the members to express their views. The statement of claim asserts that the reasons alleged in the circular were such as could and would have been controverted by divers members of the Society, if any proper opportunity of doing so had been afforded them. It further asserts that certain specific statements contained in the circular were "erroneous and misleading." But it is to be observed that it is not said that any erroneous or misleading statement was made fraudulently, or knowingly, or with any intention to mislead. The statement of claim then sets out how the general meetings necessary for passing the proposed alterations in the by-laws were summoned and held, and how large numbers of proxies were used at the meetings, and so the necessary majority secured in favour of the changes. By reason of the course followed in the argument of the Appeal, it is unnecessary to follow this part of the story in detail.

Letters are stated to have passed between the Plaintiff Campbell, as Chairman of a meeting of dissentient members of the Society, and the General Manager, the material parts of which are as follows. The Plaintiff asked three questions:—

“(1) Whether the Board's circular in favour of London extension, &c. dated November 27th, 1905, and the proxy papers for the recent 19th January meeting were prepared, printed, and issued to members, and also, as regards the circular advertised, at the expense of the Society ?

“(2) If so, whether the Board will likewise at the expense of the Society, forthwith print and issue to members a statement of facts and reasons against London, &c. extension now being prepared for the signature of Right Hon. Sir F. M. Darley, P.C., Mr. E. W. Knox, and other prominent opponents of London, &c. extension, and also proxy papers for use at the meeting on March 9th, such proxy papers having a suitable referendum—Yes, No, note, incorporate thereon—as the great majority of members have not yet voted ?

“(3) Whether the Board will agree to such adjournment of the meeting on March 9th as will enable members to have as full notice of the reasons against the extension policy as members had of the Directors' reasons in favour of the same ?”

The answers were:—

“(1) Yes.

“(2) The Directors are unable to comply with this request, but proxy papers for use at the meeting of 9th March are available for any members on application at any of the Society's offices.

“(3) The Directors are conducting all matters in strict conformity with the Society's by-laws. They do not propose to adjourn the meeting called for the 9th March next.”

It was further alleged that the Directors made use of the officers under their control for the purpose of obtaining proxies in favour of the changes proposed, and spent monies out of the funds of the Society with a view to obtaining the amendment of the by-laws, including the amounts expended in preparing, printing, issuing, and advertising the circular already referred to.

The statement of claim prayed for a declaration that the changes in the by-laws were

outside the powers of the Society to make. It prayed for a declaration that those amendments had not been approved, confirmed, or finally passed within the meaning of the Society's Acts and by-laws. It prayed for an injunction restraining the registration of the amendments, and an injunction restraining the Society or its officers from acting under the authority of those amendments, and it asked for an account of the sums said to have been illegally expended.

Two demurrers were filed to this statement of claim—one by the Society, the other by the Directors. The two demurrers were argued together before Mr. Justice Walker, who held that the statement of claim showed no cause of action, and made his order accordingly. Their Lordships entirely agree with the learned Judge.

With regard to suits framed as the present one is, by a dissentient shareholder, on behalf of himself and others, for the purpose of reversing the decision of the majority, the law is well settled as to the cases in which such a suit can lie. For authority it is not necessary to go further back than the case of *Burland v. Earle* (1902, A.C. 83, at p. 93), decided before this Board. In the judgment in that Case, it is clearly stated, "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." The statement of claim in the present case did allege that the alterations of the by-laws were beyond the powers of the Company, and the same view was pressed upon their Lordships on the argument of the Appeal. The contention is shortly this, that the words in

the Act of 1857, empowering the Society to carry on its business "in or out of" New South Wales, did not authorise an extension of the business to England or South Africa, but must be limited to those territories which formed part of New South Wales at the date of the original constitution of the Society, that is to say, what are now New South Wales, Victoria, and Queensland. Their Lordships are quite unable to accede to this contention, the words are as wide as could be used, and there is no reason whatever for not giving them their natural construction. This disposes of the case so far as it is based upon the doctrine of *ultra vires*.

There is no allegation in the statement of claim of fraud, or anything resembling bad faith. Therefore the Plaintiff has failed to bring his case within the test laid down in *Burland v. Earle*.

This would be sufficient of itself to dispose of the whole Appeal. Their Lordships think it right, however, to notice the arguments which were addressed to them, as they had been to the Court below, based upon what was said to be unfair, or improper, or irregular action on the part of the Directors in connection with the amendment of the by-laws. The alleged irregularities relied upon were shortly these. It was said that what was entrusted to the Directors, as such, was the conduct and management of the existing business, and that they were going beyond their province in recommending the extension of that business into new fields. But this appears to their Lordships far too narrow a view to take of the duties of Directors. Their Lordships think that, when the extension had been proposed, it was within the right and within

the duty of the Directors to advise the members of the Society as to the prudence of the proposal. Then it was complained that when the Directors, by their circular, brought before the members their own recommendations, and the arguments in support of them, they ought also to have acceded to the request that they should circulate an argument on the other side, to be prepared on behalf of the dissentient members. Their Lordships can see no obligation either legal or moral upon the Directors to take that course.

The remaining objections raised as to the conduct of the Directors were, that they had no right to employ the services of the officers of the Society, and no right to expend any monies of the Society, about the issue of their circular and the proxy forms. These objections necessarily follow the fate of those already considered. If it was right for the Directors to give their advice and put things in train to enable the members to act upon that advice, if they thought fit, it follows of necessity that it was right to employ the services of their officers and the funds of the Society for those purposes.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.
