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Lee Snyder

Comments and Casenotes

JUDICIAL REVIEW OF DECISIONS BY TRIBUNALS OF VOLUNTARY ORGANIZATIONS

By LEE SNYDER*

A legal decision is not unlike a handful of snow. Crude though its original circular shape may be, it acquires form and force by accretion as it is pushed through more snow. The movement once started increases in speed of itself; the creator of the original small snowball is amazed at the power and size of the now hurtling mass which he can no longer control.

In 1859, Judge Tuck rendered the opinion of the Court of Appeals in the case of *Anacosta Tribe of Red Men v. Murbach.*[1] Thereafter any dispute involving the right of a tribunal established by a voluntary organization to make final disposition of controversies between members without recourse to the civil courts was adjudicated on the basis of that opinion, which subsequently was expanded by legal interpretation almost beyond recognition.

The constitution of the Anacosta Tribe provided for the payment of sick benefits to members if the illness complained of did not originate from "immoral conduct or usages unbecoming an Improved Red Man." By-laws of the organization detailed the procedure of appeals to be taken to a Grand Council from a decision of the Tribe when withholding benefits. The Grand Council's decision was final.

Seemingly ignoring any considerations but the facility of the Order to function, the Court maintained:

> "These are private beneficial institutions operating on the members only, who for reasons of policy and convenience, affecting their welfare and perhaps their existence, adopt laws for their government to be administered by themselves, to which every per-

* Of the Baltimore City Bar. A.B., 1933, Goucher College; LL.B., 1936, University of Baltimore Law School; Graduate Student, 1937-1938, Faculty of Political and Social Sciences, New School for Social Research, New York City.

[1] 13 Md. 91 (1859).

son who joins them assents. They require the surrender of no right that a man may not waive, and are obligatory on him, only so long as he chooses to recognize their authority."[2]

"It would very much impair the usefulness of such institutions, if they are to be harassed by petty suits of this kind, and this, probably, was a controlling consideration in determining the manner of assessing benefits, and passing on the conduct of members."[3]

An analysis of this view reveals only too clearly its error.

In Maryland compulsory arbitration does not exist per se. Although organizations may establish tribunals to settle disputes among members, the decisions of these boards are not enforceable by the courts. The conclusion of the tribunal may presumably be accepted or rejected. Yet actually, an aggrieved member can only accept the decision of the tribunal, since his exclusion from a court of law by reason of his membership in an organization cancels the significance of his rejection.

Once a man pays dues into the treasury of an association he acquires a property interest in that organization.

The majority of jurisdictions outside of Maryland hold that any contract depriving a man of access to the courts where he may protect his property rights contravenes public policy and is void.[4] Unfortunately, in looking for a precedent to bolster its opinion, the Maryland court hit upon the Pennsylvania case of *Black and White-Smiths' Society v. Vandyke*,[5] which stated unequivocally that it was proper for the society in question to pass a by-law stipulating that in case of doubt as to a member's eligibility for benefits, the stewards should confer with the standing committee and upon their adverse analysis of the issue, the matter should be reviewable by the society at its next meeting. From this decision of the society an appeal was prohibited.

Judge Tuck in *Anacosta Tribe v. Murbach* disregarded the individual interests which might influence the members of the decisive tribunal of the Order and the fact that the tribunal as an agency of the Order could not avoid natural, perhaps subconscious, predilections in fa-

[2] *Ibid.*, 94-5.
[3] *Ibid.*, 95.
[4] Annot., 51 A. L. R. 1421.
[5] 2 Whart. 309, 30 Am. Dec. 263 (Pa. 1837).

vor of the association. Impartiality cannot be achieved by mere determination to ignore subjective interests.

No one would deny the right of an organization to devise procedural rules for its government, to elect its officers, to select and discipline its members. But that presents a very different situation from the right of a tribunal to usurp the judicial prerogatives with respect to a property interest.

Without questioning the propriety of the decision in *Anacosta Tribe v. Murbach*, the opinion in the case of *Osceola Tribe v. Schmidt*,[6] reaffirmed the Court's position by concluding that where a beneficial society decides in accordance with its by-laws that a member is not entitled to sick benefits, the decision is binding upon the member and the courts are not to inquire into the regularity of the proceeding.

Unable to dismiss the injustice resulting from a strict application of the *Osceola* case, the Court in *Triesler v. Wilson*,[7] diverged from that view by holding that where fraud could be proven in the conduct of an election of officers, although this was but a matter of internal management, the courts would intervene in behalf of injured members.

With the case of *Weigand v. Fraternities Order*,[8] an even more marked inflation of the principles stated in *Anacosta Tribe v. Murbach* occurred. Judge Briscoe's opinion declared that *Anacosta Tribe v. Murbach* and *Osceola Tribe v. Schmidt* indicated that rules of the association applying to property rights as well as questions of doctrine and internal management would be conclusive, when affirmed by an appellate tribunal of an Order.

In *Donnelly v. Supreme Council Benevolent Legion*,[9] the Court went, perhaps, further than Judge Tuck intended when he conceded the right of an organization to adopt laws for its government, to be administered by its members without the intervention of a court of law. Said the Court:[10]

> ". . . when the tribunals of the order have power to decide a disputed question 'their jurisdiction is exclusive, whether there is a by-law stating such deci-

[6] 57 Md. 98 (1881).
[7] 89 Md. 169, 42 A. 926 (1899).
[8] 97 Md. 443, 55 A. 530 (1903).
[9] 106 Md. 425, 67 A. 276 (1907).
[10] 106 Md. 425, 430, 67 A. 276, 278 (1907).

sion to be final or not, and that the courts cannot be invoked to review their decisions of questions coming properly before them, except in cases of fraud. This is true whether the member does not press his claim at all before the tribunals of the order, or whether he carries it through the final tribunal, or whether he goes through only a part of the hearings which he might have in the order. According to the law of this State, it is the existence of a tribunal, properly erected and charged with the duty of determining the rights of the members as between themselves and the order, which is a bar to a suit in Court of a member against such order in regard to any question so confided to the tribunals of the member's own choice.' "

Yet we do not find here any explanation of what Judge Tuck meant when he stated in *Anacosta Tribe v. Murbach*:[11]

> "They (the organizations) require the surrender of no right that a man may not waive, and are obligatory on him, only so long as he chooses to recognize their authority."

Is it not just as logical to assume that Judge Tuck was referring only to ministerial and functional rights and not to property rights?

What remedy does a member of one of these organizations have for the adjustment of his damages should he no longer desire to recognize that authority? It was upon the basis of his, Judge Tuck's decision that *Donnelly v. Supreme Council* prohibited civil courts from righting alleged wrongs except in the event of fraud. A plaintiff cannot but abide by the decision of an appeal tribunal established by his association since he is deprived of any alternatives.

Donnelly v. Supreme Council, moreover, completely disregarded the fact that earlier decisions had been based at least upon the existence of express provisions in by-laws or rules of the various organizations as to the finality of an officer's or tribunal's decision. Controverting contractual rights imputed by common law and formulating a spurious interpretation of previous decisions, this case crystallized an untenable and inequitable position at law for each member of a voluntary association.

[11] 13 Md. 91, 94 (1859).

Patriotic Order Sons of America v. Arrington,[12] admitted the existence of contrary decisions in other jurisdictions, but, with pride in the Court's independence of thought, Boyd, C. J., substantiated and reaffirmed *Anacosta Tribe v. Murbach, Osceola Tribe v. Schmidt, Triesler v. Wilson*, and *Donnelly v. Supreme Council Catholic Benevolent Legion*. But the wording of the opinion arouses further conjecture:[13]

> "Although the decisions in some other jurisdictions are to the contrary, the general rule is thoroughly established in this State that a member of a beneficial association cannot, in the absence of fraud, resort to the Courts for relief, when there is a by-law or rule in force, which requires him to exhaust the remedies furnished by the association."

After exhausting those remedies may an applicant appeal to Courts of law? Is the "remedy furnished by the association" the sole remedy only where so stated by a by-law or rule of the organization? *Donnelly v. Supreme Council* contends that it is, whether the organization has a by-law or rule to that effect or not.

In an apparent effort to escape the arbitrary position of prior decisions, Pattison, J., asserted in *Worshipful Grand Lodge v. Lee* that:[14]

> "In matter of discipline, doctrine, and internal policy of the organization, the rules by which the members have agreed to be governed constitute the charter of their rights, and courts will decline to take cognizance of any matter arising under these rules."
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> "But where, as in this case, it is shown that the proceedings instituted against him have not been conducted in accordance with the prescribed rules of procedure in such cases, and that in violation of such rules he has been given *no* opportunity to appear and defend himself before the tribunal which is to hear and determine the charges preferred against him, the Court when called upon will not hesitate to interfere in his behalf against the invasion of such rights."[15]

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[12] 107 Md. 319, 68 A. 548 (1908).
[13] 107 Md. 319, 323, 68 A. 548, 549 (1908).
[14] 128 Md. 42, 49, 96 A. 872, 874 (1916).
[15] As authority the Court cited Zeliff v. Knights of Pythias, 53 N. J. L. 536, 22 A. 63 (1891) and other cases. See a note, 3 A. & E. A. C. 211. The decision was recapitulated in Worshipful Grand Lodge, etc. v. Lee, 131 Md. 681, 103 A. 88 (1918).

Smith v. Merriott,[16] resulted from the misconduct of an officer of a Lodge who refused to turn over money and a bank book belonging to the organization, when requested to do so by a tribunal of the Lodge. The opinion said:[17]

> ". . . the general rule is well established in this State and elsewhere, that with trials and decisions of such associations as the one before us, with respect to discipline and misconduct of members, the courts will not interfere."

The Court here, in no uncertain terms, limits the jurisdiction of the association's tribunal to matters involving discipline and misconduct of members.

Yet by citing as authorities *Anacosta Tribe of Red Men v. Murbach, Osceola Tribe v. Schmidt, Donnelly v. Supreme Council,* and *United Grand Lodge v. Lee,* the Court in *Smith v. Merriott* merely added to the confusion. Do its omissions imply that the courts can decide issues resolved from matters of substantive right, but not questions pertaining to administrative and functional procedure?

Baltimore Lodge v. Grand Lodge,[18] is to be sharply distinguished from preceding cases. The plaintiff in this instance filed a bill in equity asking to be reinstated to membership in good standing in the Grand Lodge of International Association of Machinists, from which he claimed he had been improperly and illegally suspended and deprived of certain property rights. The Court held that inasmuch as the plaintiff had not exhausted the remedies offered by the association before appealing to the civil courts, he would be barred from entering suit unless he alleged and proved fraud. The court then referred to *Camp No. 6 v. Arrington,* and reiterated:[19]

> ". . . the general rule is thoroughly established in this State, that a member of a beneficial association can not, in the absence of fraud, resort to the courts for relief, when there is a rule in force, which requires him to exhaust the remedies furnished by the association."[20]

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[16] 130 Md. 447, 100 A. 731 (1917).
[17] 130 Md. 447, 451, 100 A. 731, 733 (1917).
[18] 134 Md. 355, 106 A. 692 (1919).
[19] 134 Md. 355, 358, 106 A. 692, 693 (1919).
[20] The case was remanded under (now) Md. Code (1924) Art. 5, Sec. 42.

Since every voluntary organization may decide who shall or shall not comprise its membership, the Court rightly decided that the plaintiff should exhaust the remedies offered him by the association before applying for the aid of the Court. Neither vested interests nor fundamental rights were affected.

The Court, however, still failed to say if it would grant the plaintiff relief should he exhaust the remedies of the organization and still feel aggrieved. Apparently, the Court was influenced in its decision by the existence of a rule passed by the organization requiring members "to exhaust remedies furnished by the organization" before resorting to the courts.

It is futile to speculate what legal implications may have resulted had the association not had that rule.

The next case presented to the Court, *Universal Lodge No. 14 Free and Accepted Masons v. Henry Valentine*,[21] admitted that where a member of a lodge, against whom charges were preferred, was not given reasonable notice of the charges in accordance with the constitution, rules and regulations of said order, a Court of Equity might intervene to declare the action of the Grand Lodge before whom the charges were brought, void. Even so, the Court corroborated *Baltimore Lodge v. Grand Lodge*, by repeating that before appeal to the courts, the plaintiff must first exhaust the available remedies of the group and show that he had been given no opportunity to appear and defend himself before the tribunal designated to hear and determine the charges offered against him.

Again, in *United Grand Lodge v. Murphy*,[22] we find that where members of a fraternal order are suspended without authority and without the right to appeal to a tribunal within the order, they may seek relief in equity, especially if "fraud or gross fraudulent conduct" occurred in connection with the suspension.

Grand Lodge v. Klutch,[23] confirmed the generalization:

> "According to the law of this State it is the existence of a tribunal, properly erected and charged with the duty of determining the rights of members as between themselves and the order, which is a bar

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[21] 134 Md. 505, 107 A. 531 (1919).
[22] 139 Md. 225, 114 A. 876 (1921).
[23] 144 Md. 491, 496, 125 A. 72, 74 (1924).

> to a suit in court of a member against such order in regard to any question so confided to the tribunals of the members' own choice."

From the wording of this conclusion, it can still be said that the ambiguous and confusing phrase—"the rights of members between themselves and the order"—applies only to those matters of internal policy and government which do not pertain to substantial, vested interests of members. When a man pays dues into the treasury of an organization, he acquires a property right in that organization, which is as much a matter for a court's consideration as is his alleged claim for the possession of any property purchased by him for a good and valuable consideration.

Long v. Baltimore and Ohio Railroad Co.[24] answered the question raised in *Baltimore Lodge v. Grand Lodge,* as to the need for a by-law stating the finality of a decision of a tribunal by recalling the decision in *Donnelly v. Supreme Council,* and asserting that decisions of tribunals of voluntary associations having power to decide disputed questions are final, in the absence of fraud, whether there is a by-law stating such decision to be final or not, and that courts cannot be invoked to review their decisions of questions coming properly before the tribunal except in the event of fraud.

It is important to note the Court's statement in *Long v. Baltimore and Ohio Railroad Co.,* that decisions of a tribunal may stand without interference only with respect to those disputed questions over which they have jurisdiction. Until the case of *Durkin v. Brotherhood of Locomotive Firemen and Enginemen,*[25] little mention or explanation was made concerning limitations upon the jurisdiction of these tribunals.

Durkin, a member of the Brotherhood of Locomotive Firemen and Enginemen, claimed disability benefits under the constitution of the association. The by-laws stated that a member had to exhaust the remedies provided by the organization before appealing to the civil courts.

Amplifying earlier decisions, the opinion remarked:[26]

> "It seems well settled that in this state, when a benefit society has established tribunals of its own

[24] 155 Md. 265, 141 A. 504 (1928).
[25] 170 Md. 562, 185 A. 322, 104 A. L. R. 1501 (1936).
[26] 170 Md. 562, 570, 572-73, 185 A. 322, 325, 326, 104 A. L. R. 1501, 1507, 1508 (1936).

with power to them to determine the validity of claims for benefits, which they may allow or reject, and with a further right of appeal from the ruling of the first tribunal, courts of law do not inquire into the regularity of their proceedings in passing upon such claims, and their jurisdiction is exclusive, and, notwithstanding the by-law by which the tribunals are created does not make their decision final, their determination will not be reviewed by the court in the absence of fraud, . . ."

"Numerous instances could arise which would give a member of the Brotherhood a right to resort to the courts for collection of disability benefits. His claim may have been rejected upon the ground that he was not a member in good standing, or that he was in default in the payment of an assessment, or had failed to file a proper application. The board of directors may even have refused to act upon his application or may have been guilty of fraud or misconduct in relation to the same."

The Court, however, in fact, assumed jurisdiction and passed on the question:

"Does the beneficiary certificate issued appellant cover such permanent and total disability as he alleges in his first count?"

By its citation of instances when courts may review decisions of tribunals of a particular organization, the Court cleared the way for injured claimants to appeal to the civil courts for redress. For the first time, we have a limitation, other than one for fraud, upon the finality of a decision of such a body.

That Maryland requires a restatement of the law concerning the relation of tribunals of voluntary organizations to the courts, is manifest from even a cursory glance at the decisions of the Court of Appeals reviewed above.

It must be remembered that the number of voluntary and beneficial associations has increased rapidly during the last century. Mutual aid societies, labor unions, unincorporated insurance groups have sprung up throughout the state and country. By adherence to the law laid down in *Anacosta Tribe v. Red Men, Donnelly v. Supreme Council, Long v. Baltimore and Ohio Railroad,* the State permits these mutual aid societies, unincorporated insurance

groups, social and athletic clubs, and labor unions—many with sizeable treasuries—to assume the duties of a sovereign power and dispense "justice", which can at best only be described as a "negative justice".

Recognizing the undesirability and impropriety of permitting a party to a controversy to judge or arbitrate its own case, the Illinois Supreme Court in 1893 remarked in *Railway Pass. and F. C. Mutual Aid and Benevolent Association v. Robinson*,[27] that it was far better "to strain interpretation", if necessary, to avoid such a situation. And further, in *Employee's Benefit Association v. Johns*,[28] decided by the Arizona Supreme Court, in 1926, we find:

> "One of the oldest and most salutory maxims of the law is that no man shall be judge in his own cause, and any agreement to the contrary in cases like this, made in advance of the actual issue arising, is both inequitable and illegal."

As to claims for benefits, however, the weight of authority holds that those provisions of fraternal and mutual benefit organizations ousting the courts from the right to intervene are contrary to public policy and void and therefore will not bar either a member, in case of a claim for disability or sick benefits, or his beneficiary or representative, in case of a claim for death benefits, from resort to the civil courts, if by its contract the association assumes an absolute legal obligation to pay the benefits in a certain event, and does not merely engage to pay such benefits as may be awarded by its officers or tribunals.[29]

A definition of a "legal obligation" was given in *Whitney v. National Masonic Accident Association*[30] as the agreement to pay a certain sum of money on a specified contingency.

As early as *Bauer v. Samson Lodge*[31] it was understood that, to quote the court:

> "It would be unjust to permit such organizations to take from their members all right of action for money due them. Claims for money due by virtue of an agreement are unlike mere matters of discipline, questions of doctrine, or of policy, and are not governed

[27] 147 Ill. 138, 35 N. E. 168 (1893).
[28] 30 Ariz. 609, 249 Pac. 764 (1926).
[29] 51 A. L. R. 1421.
[30] 52 Minn. 378, 54 N. W. 184 (1893).
[31] 102 Ind. 262, 1 N. E. 571 (1885).

> by the same rules. A corporation which promises to pay a certain sum as benefits during a member's illness, in consideration of his payment of dues, is not purely a benevolent organization; it may be, and doubtless is, benevolent and charitable in a great degree, but it is not a benevolent organization in the sense of dispensing benefits without consideration."[32]

In 1859, when *Anacosta Tribe v. Murbach,* was tried and decided, there were comparatively few such organizations of any power or wealth. The small handful of mutual benefit societies gathered momentum; ever increasing in size and number they now encompass varied but impressive financial interests. Confronting this unexpected mass are the decisions of those judges who puffed an idea, conceived under entirely different circumstances and different conditions, beyond the confines of the original opinions rendered in cases analogous, yet requisite of distinction. To protect that unsuspecting and unwary group of "joiners", whose numbers are constantly being enlarged, it is imperative that constructive and clarifying legislation be enacted to prevent the usurpation by voluntary agencies of courts of law from their rightful position as arbiters in disputes involving property rights.

[32] The ruling in the Bauer case was approved and followed in Supreme Council, O. C. F. v. Garrigus, 104 Ind. 133, 54 Am. Rep. 298 (1885); Daniher v. Grand Lodge, A. O. U. W., 10 Utah 110, 37 Pac. 245 (1894); McMahon v. Supreme Tent K. M., 151 Mo. 522, 52 S. W. 384 (1899); Zaremba v. International Harvester Corp., 162 Wis. 231, 155 N. W. 114 (1915); Sweet v. Modern Woodmen, 169 Wis. 462, 172 N. W. 143 (1919).