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TRADE UNIONS AND THE LAW

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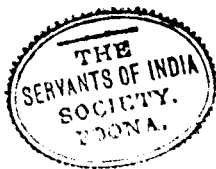
ARTHUR HENDERSON

B.A., LL.B. (CANTAB.)

OF THE MIDDLE TEMPLE AND NORTH-EASTERN

CIRCUIT, BARRISTER-AT-LAW. JOINT

AUTHOR OF "INDUSTRIAL LAW"



1927
LONDON: ERNEST, BENN LTD

X 96:(23)

F7

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*Made and Printed in Great Britain by
The Camelot Press Limited,
London and Southampton*

FOREWORD

By THE RT. HON. J. R. CLYNES, M.P.

WHATEVER our view may be of the law, there is an enormous advantage in knowing what the law is. The law may not be justice, and we may just now have no great respect for it. We may be eager to reverse it, but so long as it is the law, we should understand clearly the relation between the law and ourselves. Knowledge is power, and ignorance of the law is a limitation so serious as to afford no excuse for unpleasant consequences to those whose duty it is to understand it.

So far as a layman may judge, it is not too much to say that for nearly a century trade union law has presented a picture of ceaseless change. Decisions in the courts and Acts of Parliament have transformed or amended the relations of organised Labour to the law of the land. When British industry was a comparatively simple and less complex affair, the relations of wage-earners both to Statute law and recorded decisions were comparatively clear. In these days of far-reaching Federations of Employers and of industrial conditions of the utmost complexity, a responsibility is thrown upon workmen, and especially upon their advisers and leaders, far beyond any responsibility in a previous generation.

The arrangement and the treatment of the subjects covered in this book offer an extremely serviceable though simple exposition and narrative on all those branches of information and knowledge which must be mastered if the wage-earners are to make the best, and not the worst, of the existing situation.

I, therefore, commend this book as a volume of value far greater than the cost of it.

PREFACE

BY SIR HENRY SLESSER, K.C., M.P.

It is generally acknowledged by legal writers that there is no task more difficult for them to perform than to produce a book which shall be both intelligible to the layman and accurate in its law.

...This difficulty is present in its highest degree in the case of the subject on which Mr. Henderson has written. The roots of trade union law are to be found in mediæval Statutes. Its recent amendment is not unconnected with our existing social problems, so that the subject at every point demands a knowledge not only of a specific legal kind but also of legal and general history. The trade union itself, like all other societies which fall between the defined personality of a corporation on the one hand and an individual on the other, presents alike to the jurist and to the practitioner problems of the greatest nicety. Its legal liabilities, its capacity to hold property, its relation to its own members and to the outside world, and its position generally in the courts, are still within the area of debatable law. To these complexities must be added the elusive doctrines of restraint of trade and conspiracy in their relation to trade unions; so that a classification of the whole position, if it be accomplished, is one which we must all welcome.

In my view, Mr. Henderson has gone farther to achieve this result than any of his predecessors. So far as the subject can be made clear, Mr. Henderson has succeeded in his task.

It is with a very real belief in the value of his work as a lucid and reliable exposition that I welcome the opportunity to introduce it to his readers.

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Trade Unions and the Law

CHAPTER I

EARLY HISTORY

Trade Unions and the Common Law

IN order to understand the present legal position of trade unions it is necessary to consider briefly the more general history of the law relating to trade-unions: (i.) in their criminal aspect, and (ii.) in their civil aspect.

Criminal Liability of Trade Unions

From very early times all combinations or associations of workmen which had for their object the raising of wages by the withholding of labour were regarded with suspicion and distrust, partly because it was felt that they constituted forces that were a potential challenge to the power of organised government in the State, which itself in those days largely regulated the conditions of labour, and partly because of their objects and policy being considered to operate in restraint of trade. Consequently, in course of time, such combinations were declared by Statute to constitute illegal conspiracies.¹

Combinations and Acts

In 1799, all combinations of workmen which had as an object the regulation of their conditions of labour were made illegal,² and in 1800 this Statute was amended and codified by the Combination Act,³ which is noteworthy as being the first attempt on the part of the

¹ See *Trade Union Law*, Slessor and Baker, pp. 1-9.

² (1799) 39 Geo. III, c. 81.

³ (1800) 39 & 40 Geo. III, c. 106.

Legislature to establish machinery for arbitration in the sphere of industry.

By the Combination Act, 1800, every combination for obtaining an advance in wages, or altering the hours of work, or decreasing the amount of work, or preventing any person employing whomsoever he might think fit to employ, or for preventing workmen hiring themselves or attempting to induce workmen to leave their work, was declared illegal, as also was the attending of any meeting called to further any of such objects or the spending of money for the furtherance of such objects or any of them. In 1824, the Combination Laws Repeal Act¹ was passed, which removed all criminal liability of combinations which sought to advance wages or improve working conditions. In 1825 an amending Act was passed which considerably qualified the immunity conferred by the Act of 1824; although the Combination Laws, indeed, were left repealed, new offences—"molestation, intimidation, threats, and obstruction"—were created.²

After 1825, therefore, combinations of workmen, although in restraint of trade, were not *per se* criminal bodies, at least so far as the Statute law was concerned. But, subsequent to the passing of the Combination Laws Repeal Act, the erroneous opinion³ became prevalent that combinations in restraint of trade were unlawful conspiracies at common law and, in a number of cases, trade union leaders were tried and found guilty of criminal conspiracy at common law (see *Rex v. Rowlands*).⁴ The activities of trade unions were also severely curtailed by the wide interpretation placed by the courts on the new offences created by the 1825 Act, which resulted in a number of convictions.

¹ (1824) 5 Geo. IV, c. 95, s. 2.

² (1825) 6 Geo. IV, c. 129. As to the present law relating to intimidation, see chap. v., *infra*, p. 91.

³ See Slessor and Baker's *Trade Union Law*, p. 165.

⁴ (1853) 17 Q.B.D. 671; *Rex v. Byherdike* (1832) 1 M. & Rob. 179.

In 1859, the Molestation of Workmen Act¹ was passed, which provided that workmen were not to be considered guilty of "molestation" or "obstruction" under the Act of 1825 by reason only of entering into agreements for the regulation of wages and hours or of endeavouring peacefully to persuade others to cease or abstain from work for the same purpose. This Statute to some extent, therefore, modified the decision in *Rex v. Rowlands*.

This was followed in 1871 by the passing of two Statutes affecting trade unions. By s. 2 of the Trade Union Act, 1871,² it is provided that the purposes of a trade union are not, by reason merely that they are in restraint of trade, to be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

By another Act,³ passed in the same year, the Act of 1859 was repealed, including those provisions which expressly legalised "peaceful persuasion." The impression subsequently arose that peaceful persuasion (or picketing) had, by virtue of the repeal of the 1859 Act, become unlawful, and support was given such a view by the decision in *Rex v. Bunn* (1872) 12 Cox C.C. 316, where it was held that to strike in breach of contract in order to compel the reinstatement of a discharged man was an unlawful interference by way of molestation with the employer's right to employ whom he chose.

"This decision," said Sir J. Stephen, "caused great dissatisfaction, and probably was the chief cause which led to the passing of the Conspiracy and Protection of Property Act, 1875."⁴ S. 3 of the 1875 Act⁵ provided that "no combination amongst members of trade unions to do any act in furtherance of a trade dispute shall be indictable as a conspiracy, unless such act if committed by one person would be punishable as a crime."

¹ 24 Vict., c. 34. ² 34 & 35 Vict., c. 37, s. 2. ³ *Ibid.*, c. 38.

⁴ *History of Criminal Law*, Stephen. ⁵ (1875) 38 & 39 Vict., c. 86.

This provision completely nullified the decision in *Rex v. Bunn*; and the 1875 Act, the Trade Disputes Act, 1906,¹ now constitute the principal enactments affecting trade unions in their criminal and tortuous aspects, and the Trade Disputes and Trade Union Act, 1927.²

Civil Liability of Trade Unions

Apart altogether, however, from the criminal liability of trade unions, the agreements of trade unions have, in so far as they have sought to advance the economic interests of their members by the withholding of their labour, been held under the civil law to be unlawful, as being contrary to public policy by virtue of their being in "restraint of trade." From very early times, contracts imposing a general restraint on trade have been held to be void.

"Every person has a right under the law to full freedom in disposing of his own labour or his own capital according to his will."³

The above passage embodies the general principle of the common law that a man is entitled to carry on a lawful business as and where he wills.

What Constitutes "Restraint of Trade"

There is no clear definition as to what amounts to restraint of trade. The question to be decided is whether the restraint exceeds what is reasonable. A partial restraint, limited so as to afford reasonable protection only to either or both of the contracting parties, and not injurious to the public interest, is good.⁴

Included among those agreements which are held to

¹ 6 Edw. VII, c. 47.

² 17 & 18 Geo. V, c. 22.

³ Sir William Erie's memorandum on "the right to free course for trade in general," annexed to the Report of the Royal Commission on Trade Unions, 1869.

⁴ *Nordenfeldt v. Maxim Nordenfeldt & Co.* [1894] A.C. 535.

be unenforceable at common law, by reason of being in restraint of trade, are those of trade unions (whether of employers or workmen) with objects involving the imposing of restrictive conditions on the conduct of any trade or business, e.g. it has been held that a trade union whose rules forbid members, under penalty of fine, from binding their sons as apprentices in non-union shops is illegal at common law.¹ The result of this was to place trade unions in a most invidious position. They had no legal identity, and could not therefore sue or be sued in any court of law. One important consequence was their inability to resort to the courts for the purpose of preserving or recovering their funds or other property. A person could, for example, steal or embezzle their funds with impunity. Their bankers or agents could refuse to deliver up the union moneys entrusted to them, and there was no redress; thus in *Hornby v. Close*² a society endeavoured to take advantage of the Friendly Societies Act, 1855; which provided that a friendly society might recover moneys wrongfully withheld by proceedings before the Justices, if such society were not itself established for any illegal purpose. It was held that, while one of the objects of Hornby's society (the Boilermakers') was to relieve its members, yet, as one of its principal objects was to provide strike benefit for members on strike, the society was illegal at common law and could not recover its moneys under the Act. This decision was subsequently reversed by the Trade Union Funds Protection Act of 1869, which provided that trade unions were to enjoy the protection of the Friendly Societies Act of 1855.

Then in 1871 the Trade Union Act was passed, s. 3 of which provided that the purposes of a trade union are not,

¹ *Rigby v. Connol* (1880) 14 Ch.D. 482.

² (1867) L.R. 2 Q.B.D. 153; see also *Farrow v. Close* (1869) 4 Q.B.D. 509.

by reason merely that they are in restraint of trade, to be unlawful, so as to render void or voidable any agreement or trust. So that the rules and trusts of a trade union are no longer invalid by reason of their being in restraint of trade. The above provision was, however, considerably modified by the provisions of s. 4 of the same Act.¹

The Act of 1871 may be said to be the principal Act defining the legal position, status, powers, and liabilities of trade unions in their civil aspect, and deserves a careful study from the student of trade union law. As it was stated by Lord Justice Farwell in *Osborne v. Amalgamated Society of Railway Servants*²:

"Prior to the passing of the Act of 1871 a trade union, as such, had no legal status. It was, speaking generally, an association of wage-earners for the purpose of improving or maintaining the conditions of employment. It combined the objects of a friendly society with those of a trade guild. In the former capacity it gave relief to its members when out of work from sickness or accident or on strike—that is, 'dispute' and 'unemployed' benefits; and in the latter capacity it bargained with employers on behalf of all its members, and, with the influence of a united body, for higher wages, shorter hours, and the like. There was also the further question, in which the masters were only indirectly interested, of encroachment of trade on trade. These, and such as these, were the proper functions of a trade union in 1871."³

Comment is sometimes made on the fact that no distinction was made in the 1871 Act between the benevolent and trade purposes of a trade union. One explanation why no such distinction was made is to be found in *Osborne's Case*,⁴ where Lord MacNaughten said:

¹ As to which see *infra*, p. 58.

² *Ibid.*

³ [1909] 1 Ch.D. 163 at p. 188.

⁴ [1910] A.C. 87 at p. 95.

"Whatever may have been the origin of trade unions, it is a matter of common knowledge that many such societies were in existence long before the Act of 1871. Generally speaking, they had two main objects. They were combinations for trade purposes, and for benevolent purposes as well. But when the struggle began which led to the Act of 1871, those who managed the case on the part of trade unions insisted that the benevolent purposes of a union were to be regarded as secondary, and subordinate to its trade purposes. They urged that the strength of the union and the confidence of its members simply consisted in this—that it could, if so disposed, employ the whole of its funds in support of trade ends. They objected to any separation of funds as being calculated to paralyse the efficacy of the institution, and tantamount to a proposal to suppress unionism by Statute. Hence it comes that the benevolent purposes of trade unions, though referred to in the Trade Union Acts, 1871 and 1876, are not mentioned either in the original or in the amended definition of the term 'trade union.' They are relegated to an inferior and subordinate position."

Rules of a Union

Whether a trade union is lawful or unlawful at common law depends entirely upon the construction of the rules, and whether the objects of the society, as appearing from the rules, involve an illegal restraint of trade. The construction of the rules is for the court and not for a jury, and the mode in which the rules have in practice been applied is not relevant on the question of their construction. The onus of proving that an association is illegal at common law rests on those who rely on it, and will not be presumed by the court.¹ Difficulties in interpreting the

¹ Per Farwell L.J. in *Russell v. Amalgamated Society of Carpenters* [1920] 1 K.B.D. 506 at pp. 520-2.

rules will not prejudice the legal position of a society, and it must be found in sufficiently plain language that there are in the rules provisions so in restraint of trade as to render the society illegal at common law.¹

Thus where there is a duty on members to submit all questions of wages to the union,² or where there are rules involving restrictions on hours or work, the union may be held to be illegal at common law.³ The fact that a breach of the rules by a member involves the liability to loss of all the benefits goes a very long way towards the conclusion that the main object of the society is one which involves an unlawful restraint of trade.⁴ It is not, however, every restraint of trade which will render the provisions of an agreement unlawful, in the sense that it is unenforceable at law. To have that effect, the restraint of trade must be such as in some way to prejudice the interests of the community.⁵ The test of validity in such a case is reasonableness with reference to the real and legitimate objects of the society. Rules made for the bona fide purpose of protecting the funds from claims which can be avoided with reasonable care and management will not be invalid on the ground that they are in restraint of trade, provided the rules are not unduly oppressive or obviously detrimental to the public. To render such rules invalid, it must be clearly shown that they go beyond what is necessary for that purpose.⁶

A trade union with rules some of which are in restraint of trade may be illegal as being in restraint of trade, even though the remaining rules are lawful.⁷

¹ Per Buckley L.J. in *Osborne's Case* [1901] 1 Ch.D. 540 at p. 572.

² *Sayer v. Amalgamated Society of Carpenters* (1902) 19 T.L.R. 122.

³ *Cullen v. Elwin* (1904) 20 T.L.R. 490; *Russell v. Amalgamated Society of Carpenters* (*supra*).

⁴ Per Vaughan Williams L.J. in *Russell's Case*, p. 519.

⁵ *Ibid.*, p. 516.

⁶ Per Lindley L.J. in *Swaine v. Wilson* (1889) 24 Q.B.D. 232 at p. 261.

⁷ *Old v. Robson* (1890) 59 L.J., M.C. 41.

On the other hand, although some of the rules of a society are in restraint of trade, and as such illegal, yet if the general objects of the society be not illegal, the existence of such rules, though they could not be enforced in a court of law, would not prevent the enforcement of those rules which are not illegal¹; and there may in such cases sometimes be subsidiary rules, not affecting the main object of an association, which may be more or less in restraint of trade, and yet not prevent the other rules of the association which are free from that objection from being enforced.² Where, however, the main purpose of such a society is such that a member can hardly avail himself of it without bringing into operation the purposes of the society which are in restraint of trade, then such society will be illegal and its rules will be unenforceable.³ But if the objects are separate and distinct, and are carried out independently, for all legal purposes such objects are of co-ordinate importance in testing whether the main object of the association is illegal.⁴

Rules providing for strikes in certain contingencies and the grant of strike pay are not necessarily illegal,⁵ unless the strike involves the commission of an unlawful act.⁶ Strikes, not otherwise unlawful, are combinations neither for accomplishing an unlawful end nor for accomplishing a lawful end by unlawful means.⁷ The question whether a strike is legal or illegal depends, therefore, upon the nature and the mode of the strike.⁸

¹ *Swaime v. Wilson* (1889) 24 Q.B.D. 252, per Lord Esher, p. 257.

² *Russell v. Amalgamated Society of Carpenters* [1910] 1 K.B.D. 506, per Vaughan Williams L.J. at p. 516; *Burke v. Amalgamated Society of Dyers* [1906] 2 K.B.D. 383, per Kennedy J. at p. 590.

³ *Burke's Case*, *ibid.*

⁴ *Gosney v. Bristol Trade and Provident Society* [1909] 1 K.B.D. 902, per Moulton L.J. at p. 921.

⁵ *Denaby and Cadaby Main Collieries Ltd. v. Yorkshire Miners' Federation* [1906] A.C. 384.

⁶ *Ibid.*, per Lord James, C.P. 406; *Smithies v. National Association of Operative Plasterers* [1909] 1 K.B.D. 310.

⁷ *Mullett v. United French Polishers* (1904) 20 T.L.R. 595, 310.

⁸ See chap. v., *infra*.

Rules which provide for the infliction of a penalty on members refusing to strike render the union illegal at common law as being in restraint of trade,¹ and this would be so whether the strike was legal or illegal.

To determine the question whether a society is illegal it is necessary to examine the purposes for which the society is formed, and the means whereby it proposes to effect those purposes. If either of these be illegal, it may be necessary to examine more closely into the nature of that illegality, to see whether it is of such a kind as to taint the whole constitution of the society and so make it an illegal society.² Also, if the rules by their character indicate as an object one which, in its nature or by reason of the manner in which it is to be worked out, is inconsistent with the public interest, then the character of such rules, taken as a whole, will be such as to preclude the court from giving effect to individual rules which, taken by themselves, might have been unobjectionable.³

Moreover, though the objects of an association which includes the maintenance of strikes are legal objects if carried out in a legal way, yet they are not objects with regard to which agreements concerning them can be enforced by the courts.⁴

¹ *Thomas v. Portsmouth Branch of the Shipwrights' Association* (1912) 28 T.L.R. 372.

² *Gozney's Case* (*supra*), per Fletcher Moulton L.J. p. 918.

³ *Russell's Case* (*supra*), per Vaughan Williams at pp. 516, 517.

⁴ *Sayer v. Amalgamated Society of Carpenters* (1902) 19 T.L.R. 122 at p. 123.

CHAPTER II

STATUS AND POWERS OF TRADE UNIONS

Status of Trade Unions

A TRADE union is neither a corporation nor an individual nor a partnership between individuals. It is a voluntary association of individuals almost invariably owing its legal validity to the Trade Union Acts, which have bestowed on it a capacity to own property and to act by agents, both of which are admittedly essential qualities of a corporation,¹ but which at the most can only be said to constitute a trade union as a species of quasi-corporation.² The effect of the Trade Union Acts is therefore to create a statutory legal entity which by registration in manner provided by the Acts³ though not technically a corporation in law does constitute a body created by Statute distinct from the unincorporated trade union consisting of separate individuals.⁴

The explanation of the present anomalous legal position of trade unions which is sometimes put forward is that it was originally intended to create a body which could neither sue or be sued in courts of law. Whether this is so or not, the tendency of the courts has been rather in the opposite direction, and the judges have inclined to the view that even under the 1871 Act a registered trade union is sufficiently incorporated to

¹ See *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

² Per Cozens Hardy M.R. in *Osborne's Case* [1909] 1 Ch. 160 at p. 194; per Farwell L.J. *ibid* at p. 197.

³ See p. 24, *supra*.

⁴ Per Lord Brampton in *Taff Vale Case* (*supra*) at p. 442.

render it liable to be sued or be capable of suing in its trade name.¹ Thus trade unions, though not in fact incorporated must be deemed to be statutory bodies, at any rate when registered. A trade union, which is not registered, may, however, apply to the Registrar of Friendly Societies for a certificate that the Union is a trade union within the meaning of the Trade Union Acts.

Statutory Definition

The expression "trade union" means any combination, whether temporary or permanent,² the principal objects of which are, under its rules, (i.) the regulation of the relations (a) between workmen and masters or (b) between workmen and workmen, or (c) between masters and masters, or (ii.) the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.³ The above definition follows largely on that contained in s. 16 of the Trade Union Act, 1876, and prior to the Osborne Case⁴ little difficulty seems to have arisen in applying the definition, the courts even extending it so as to bring under it combinations which at first glance would hardly seem to come under the regular description of trade unions, e.g. societies for the mutual protection of traders, which included among their rules provisions imposing restrictive conditions.⁵ In the Osborne Case the definition section though not directly in issue afforded some ground for the argument that the Legislature had only intended trade unions to pursue activities which were within the ambit of the statutory definition, and that they had no power to pursue purposes other than those

¹ See *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426 at p. 436.

² It would appear that the branch of a union may be regarded as a trade union for the purposes of the Trade Union Acts; see s. 3 (2) of the 1906 Act.

³ See Trade Union Act, 1913, ss. 1 and 2. ⁴ [1910] A.C. 87.

⁵ *Chamberlain's Wharf Ltd. v. Smith* [1900] 2 Ch. 605.

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contained therein. Lord Justice Moulton went so far as to indicate that in his opinion the pursuit of other purposes might disentitle a combination to the status of a trade union, even though its purposes included one or more of the objects contained in the statutory definition. He said :

“ I cannot agree with the view that any combination that has among its objects the regulation of such matters as are referred to in the statutory definition is *ipso facto* a trade union, and within the purview of the Acts relating to trade unions. . . . In my opinion a trade union, for the purposes of these Acts, must substantially be a trade union as defined and nothing more, always bearing in mind that there are important collateral or ancillary purposes, such as benefits to members, insurance, etc., which fairly come within the meaning of trade union purposes. For example, if an association of masters of less than twenty in number were to form a trading combination, they would not, in my opinion, be exempt from actions of tort merely because their resolutions aimed at the restriction of their competitors' trade in a manner which would, before the Act of 1871, have been unlawful at common law by reason of being in restraint of trade. Nor would a combination, a substantial part of whose objects was political, be protected from actions for libel merely because it also sought to regulate the relations between masters and masters or between masters and workmen.”¹

In deciding whether any association comes within the definition of a trade union, its objects and rules must be read as a whole.²

¹ *Osborne v. Amalgamated Society of Railway Servants* [1909] 1 Ch. 265.

² *Chamberlain's Wharf Ltd. v. Smith* [1900] 2 Ch. 605.

By a subsequent alteration of the law, the fact that a combination has, under its constitution, objects or powers other than the statutory objects set out above does not prevent the combination being a trade union in law, so long as the combination falls within the statutory definition.¹ Moreover, any such trade union has power to apply the union funds for any lawful objects or purposes for the time being authorised under its constitution.² Thus whereas it was probably *ultra vires*³ for a trade union to carry on a trade or a newspaper prior to the passing of the 1913 Act, now, however, a trade union can clearly carry on any business or undertaking authorised by its constitution and (subject to the requirements of s. 3 of the 1913 Act as to the financing of political literature) a trade union has power to carry on a newspaper.⁴

A trade union may not be registered as a limited company under the Companies (Consolidation) Act, 1908, and if so registered, the registration is void. Similar prohibitions apply to registration under the Industrial and Provident Societies Acts and the Friendly Societies Acts.⁵

A registered trade union, though carrying on life, fire, accident or employers' liability insurance or bond investment, is not an assurance company under the Assurance Companies Act, 1909,⁶ and is exempt from its provisions, which require (*inter alia*) a deposit of £20,000,⁷ accounts, statements, and actuarial reports to be kept, etc.⁸ So also an unregistered trade union carrying on insurance business, and originally established more than twenty years before July 1, 1910, may, on application, receive from the Board of Trade the exemption conferred by that Act

¹ Trade Union Act, 1913, s. 1.

² i.e. beyond the powers of.

³ But see *Bennett v. Amalgamated Society of Operative Painters* (1915) 31 T.L.R. 203; *Cartier v. Society of Boilermakers* (1915) 60 Sol. J. 44; *Forster v. Shop Assistants' Union* (1927) 43 T.L.R., p. 199.

⁴ Trade Union Act, 1871, s. 5.

⁵ 9 Edw. VII, c. 49, s. 1.

⁶ *Ibid.*, s. 2.

⁷ *Ibid.*, ss. 3 and 12.

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on registered trade unions, if it appears to the Board, after consultation with the Chief Registrar of Friendly Societies, that the society is one to which it is inexpedient that the provisions of the Act should apply.¹

The Assurance Companies Acts apply therefore to all unexempted unregistered trade unions carrying on insurance business, and s. 7 of the Trade Union Act Amendment Act, 1876,² has been repealed.³

It is provided, however, that "life assurance" under the Assurance Companies Act, 1909, does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or the dependants of such persons.⁴ As these are the usual trade union benefits, it will be observed that the average trade union is in no way affected by the 1909 Act.

Insurance for loss of tools is not to be deemed to be a fire insurance by reason only of the fact that fire is one of the risks covered.⁵

The Assurance Companies Act does not apply to trade unions which are associations of masters if they satisfy the Board of Trade that they are carrying on business wholly or mainly for the mutual insurance of its members against employers' liability or other risk connected with the employment of workmen in their trade.⁶

Where a trade union is a life assurance company it may be wound up as an assurance company under the Companies (Consolidation) Act, 1908,⁷ on a petition of ten or more policy-holders owning policies of the aggregate value of not less than £10,000, presented by leave of court on a *prima facie* case with security for costs.

¹ 9 Edw. VII, c. 49.

² 39 & 40 Vict., c. 22.

³ Assurance Companies Act, 1909 (9 Edw. VII, c. 49), s. 37, Schedule IX; as to the National Insurance Act, 1911, see *infra*, chap. viii.

⁴ Assurance Companies Act, 1909, s. 29.

⁵ *Ibid.*, s. 28 (3).

⁶ *Ibid.*, s. 33 (a).

⁷ *Ibid.*, s. 15.

For these purposes such an assurance company is deemed to be an unregistered company under the 1908 Act.

Registered Trade Unions : Powers Acquired by Registration

The Trade Union Act, 1871, provides that the registration of a trade union is to be optional and the legality of a trade union is not affected by reason of the fact that it is unregistered. Certain advantages, however, do accrue to the benefit of those unions that become registered under the Trade Union Acts. Thus registered trade unions may purchase or take upon lease land to any extent¹; their property becomes vested in trustees without specific vesting; and the trustees may bring or defend actions with regard to such property.² A trustee, however, is not to be held liable to make good any deficiency which may arise or happen in the funds of any union, unless such money is actually received by him on account of the union.³ All moneys received by the treasurer or other officers of a registered union must be accounted for by them to the trustees or the members on demand and all effects and property in their hands or custody must be given up on their being requested so to do and they may be compelled to do so in any competent court.⁴ Any officer, member or other person who :

- (a) obtains possession of the property of the trade union by false registration or imposition; or
- (b) having possession of such property wilfully withholds or fraudulently misapplies the same; or
- (c) wilfully applies any part of such property, to purposes other than those expressed or directed in the rules;

is liable to a fine not exceeding £20, and costs not

¹ Trade Union Act, 1871, s. 7, as amended by the Real Property Amendment Act, 1923.

² *Ibid.*, s. 9.

³ *Ibid.*, s. 10.

⁴ *Ibid.*, s. 11.

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exceeding 20s., and in default of payment, imprisonment with or without hard labour for not more than three months.¹

Other powers of a registered trade union include :²

(1) If a trade union has stock in the funds, and a trustee is absent from the United Kingdom, becomes bankrupt, or a lunatic, dies, or has been removed, or if it be unknown whether he is alive or dead, a registered trade union, instead of having to apply to the High Court or to take such other proceedings as it would have to do if it were unregistered, can have the stock transferred by direction of the Registrar, on payment of £2 fee.

(2) Members of a registered trade union who are over the age of sixteen years may dispose at death of sums payable by the union, not exceeding £100, by written nomination without a will.

(3) Where there is no will and no nomination, the trustees may distribute sums not exceeding £100 without letters of administration being taken out.

(4) Money due to a member of illegitimate birth who dies intestate may be thus distributed as if he had been legitimate.

(5) A registered union has a legal process for change of name.

(6) Its rules must be placed on record in the office of the Registrar of Friendly Societies, whence authentic copies can be obtained, which are evidence in any court of justice.

(7) A registered trade union is expressly exempted from the provisions of the Assurance Companies Act, 1909, under which it would appear that unregistered trade unions may render themselves liable to heavy

¹ Trade Union Act, 1871, s. 12.

² See Slessor and Baker, *Trade Union Law*, third edition.

penalties for not complying with the statutory requirements.

(8) It is entitled to exemption from income tax under Schedules A, C, and D in respect of interest and dividends applicable and applied solely for the purpose of provident benefits, i.e. payments, expressly authorised by the registered rules of the union, made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or lost his tools by fire or theft, or in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as provision for the children of a deceased member. This exemption, however, only extends to a union which is restricted by its rules to the insuring of any person in a sum not exceeding £300 by way of gross sum, or £52 by way of annuity.¹

(9) A registered trade union or any branch thereof may contribute to the funds and take part in the government of a medical society registered under the Friendly Societies Act, 1896, s. 22.

Registration : Application to Register

Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of the Trade Union Act, 1871,² and the regulations made thereunder with respect to registration,³ register such trade union. The Registrar upon registering such trade union issues a certificate of registration, which certificate, unless withdrawn or cancelled, is conclusive evidence that the regulations of the Trade Union Acts with respect to registry have been complied with.⁴ The certificate of

¹ s. 39 of the Income Tax Act, 1918.

² s. 6.

³ *Visa* Appendix B, p. 229.

⁴ See Trade Union Act, 1871.

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the Registrar is not, however, conclusive evidence as to the legality or otherwise of the society,¹ nor as to the validity of the proceedings taken by a trade union for the passing of its rules and regulations.² The Registrar, however, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.³ In the case of a trade union which has been in operation for more than a year before the date of the application for registration, there is a special provision, which requires a general statement of the receipts, funds, effects and expenditure of the trade union to be delivered to the registrar. Such statement must be in a similar form to the annual general statement of a trade union.

Withdrawal or Cancelling of Certificate

Any combination registered as a trade union is to be deemed to be a trade union so long as it continues to be so registered,⁴ but a combination cannot be so registered as a trade union unless the principal objects of the combination, as contained in its rules, are statutory objects,⁵ and the certificate of registration may be withdrawn if the rules of the union are altered in such a manner that the principal objects of the union are no longer statutory objects or if the principal objects for which the union is carried on are not statutory objects.⁶ Moreover, on proof to the satisfaction of the Registrar either

(a) that the certificate was obtained by fraud or mistake, or

¹ *Gooney v. Bristol Provident Society* [1909] 1 K.B. 902.

² *Osborne v. Amalgamated Society of Railway Servants* [1909] 1 Ch. 263; [1910] A.C. 87.

³ Regulation (3), Appendix B, p. 229.

⁴ Trade Union Act, 1913, s. 2 (1).

⁵ Trade Union Act, 1913, s. 2 (a).

⁶ See *supra*, p. 18.

(b) that any of the purposes of the trade union are unlawful, or

(c) that the trade union has, after notice from the Registrar, wilfully violated any of the provisions of the Trade Union Acts, or has ceased to exist,

the Registrar may cancel the certificate, but before so doing, he must give to the trade union not less than two months notice on a form prescribed, specifying the grounds of the proposed withdrawal or cancellation.¹ The certificate of registration may also be withdrawn at the request of the trade union, which must be sent (in a prescribed form) to the Registrar, who signifies his withdrawal of the certificate on a prescribed form, and subject to certain prescribed conditions.² A trade union whose certificate has been withdrawn or cancelled, ceases to enjoy as such the privileges of a registered trade union but without prejudice to any liability actually incurred by such trade union which may be enforced against it as if such withdrawal or cancellation had not taken place.³

Application for Certificate

Any unregistered trade union may without registering the union apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of the Trade Union Acts, and the Registrar, if satisfied, having regard to the constitution of the union, and the mode in which the union is being carried on, that the principal objects of the union are statutory objects and the union is actually carried on for those objects, will grant such a certificate. The Registrar may, however, on an application made to him by any person,

¹ Trade Union Act, 1876, s. 8. Regulations (12) and (14), *vide infra*, p. 231.

² *Ibid.*, s. 8. For form see p. 242.

³ *Ibid.*, s. 8 (2).

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withdraw such certificate if he is satisfied, after giving the union an opportunity of being heard, that the certificate is no longer justified.¹

A certificate that a trade union is a trade union within the meaning of the Act is so long as it is in force to be conclusive for all purposes.²

Any person aggrieved by any refusal of the Registrar to register a combination as a trade union or to give a certificate that an unregistered trade union is a trade union or by the withdrawal of a certificate of registration or of a certificate that an unregistered union is a trade union has a right of appeal to the court.³

Regulations of Secretary of State

The regulations respecting registration under the Trade Union Acts are to be made by one of the principal Secretaries of State (in Scotland the Secretary for Scotland). Such regulations may also deal with the seal (if any) and the forms to be used for the purpose of registration, and for the inspection of documents kept by the Registrar and the fees (if any) to be paid on registration, but such fees must not exceed the sum of £1 for registration and 2s. 6d. for inspection of documents.⁴

Appointment and Qualification of Registrars

The registrar of friendly societies to whom application to register a trade union is made, is an official appointed under the provisions of the Friendly Societies Act, 1896.⁵ Under this Act a chief registrar and one or more assistant registrars of friendly societies for England, and assistant registrars for Scotland and Ireland, are

¹ Trade Union Act, 1913, s. 2 (3). ² Ibid., s. 2 (3). ³ Ibid., s. 2 (4).

⁴ Trade Union Act, 1871, s. 13 (6); Second Schedule; see also Regulation (24), 1871, p. 233.

⁵ (1871) 34 & 35 Vict., c. 32.

appointed by and hold office during the pleasure of the Treasury. Every chief registrar must be a barrister of not less than twelve years' standing. One, at least, of the assistant registrars for England and every assistant registrar for Ireland must be a barrister or solicitor of, respectively, not less than seven years' standing. Every assistant registrar for Scotland must be an advocate, writer to the signet, or solicitor, of not less than seven years' standing in their respective professions.¹ The assistant registrars are sub-ordinate to the chief registrar.²

The Central Office

The Central Office of the Chief Registrar is the Central Office of the Registrar of Friendly Societies, who exercises the functions of the registrar for England.³ The assistant registrars for Scotland and Ireland are required to send to the central office in London copies of all documents, registered or recorded by them, as the chief registrar may from time to time direct.⁴

Formalities of Registration

* The application to register a trade union must be sent to the Registrar (on a prescribed form)⁵ together with printed copies of the rules and a list of the titles and names of the officers,⁶ and upon being satisfied that the trade union has complied with the regulations respecting registration in force, he must register the trade union and its rules.⁷ The duties of the Registrar are ministerial and not judicial.⁸

¹ (1896) 59 & 60 Vict., c. 25, s. 1; Regulation (1), p. 229.

² *Ibid.*, s. 3.

³ *Ibid.*, ss. 6, 13 (1) and (2); s. 8 (1).

⁴ *Ibid.*, s. 4.

⁵ *Infra*, pp. 30 *et seq.*

⁶ (1871) 34 & 35 Vict., c. 31, ss. 6, 13 (1) (2).

⁷ See *Rex v. Registrar of Friendly Societies* (1872) 7 Q.B. 741.

⁸ For form, *vide infra*, p. 235.

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Registered Name

No trade union may be registered under a name identical with that by which any other existing trade union (whether registered or unregistered) is known, or so nearly resembling such name as to be likely to deceive the members or the public.¹

Registered Office

Every registered trade union must have a registered office, to which all communications and notices may be sent. If any trade union is in operation for several days without having such an office, such trade union and every officer thereof incurs a penalty not exceeding £5 for every day during which the union is in operation. Notice of the situation of the registered office and of any change therein must be given (on a prescribed form)² to the Registrar and must be recorded by him; and, until such notice is given, the trade union is not to be deemed to have complied with the conditions of registration.³ The removal of the registered office of a trade union from one country (i.e. England and Wales, or Scotland or Ireland) to another does not render re-registration of the union necessary in the country in which its new registered office is situate.⁴

Registry of Unions doing Business in more than one Country

Trade unions carrying or intending to carry on business in more than one country must be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, must, when registered, be sent to the registrar of each of the other countries to be recorded by

¹ 34 & 35 Vict., c. 31, s. 13 (3); Regulation (2), *infra*, p. 229.

² For form, *vide infra*, p. 244.

³ (1871) 34 & 35 Vict., c. 31, s. 13; Regulation (15), p. 231.

⁴ Regulation (154), p. 231.

him. Unless such rules be so recorded the union is not to be entitled to any of the privileges of the Acts of 1871 and 1876, in the country in which such rules have not been recorded, and until such amendments of rules are recorded the same do not take effect in such country.¹ A trade union having its registered office in one country, but which has recorded its rules with another in accordance with this requirement, is subject to the jurisdiction of the courts in the country in which its rules have been recorded.²

Registered Rules

In addition to having a registered office a trade union must have and register rules³ which must contain the following particulars⁴:

" Name "

1. The name of the trade union⁵ and its place of meeting for the transaction of its business.

" Objects "

2. The whole of the objects, for which the trade union is to be established; the purposes for which the funds thereof are to be applicable; the conditions under which any member may become entitled to any benefit assured thereby; and the fines and forfeitures to be imposed on any of its members.

¹ s. 6 of the Trade Union Amendment Act, 1876; note that for the purposes of this section, Northern and Southern Ireland are to be deemed separate countries (see Statutory Rules and Orders, 1922, No. 184).

² *Mackendrick v. National Union of Dock Labourers in Great Britain and Ireland* (1911) 48 S.L.R. 17.

³ Where rules form an exhaustive code, it is *ultra vires* the governing body to vary them. In *re Durham Miners' Association, Watson v. Carr* (1900) 17 T.L.R. 39.

⁴ s. 14 of the Trade Union Act, 1871.

⁵ In which registered name a trade union may sue or be sued. *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

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The objects must be objects which it is competent for a trade union to pursue¹; but the court will not prevent a trade union carrying out one of its lawful objects, provided for in its rules, merely because the rules do not expressly provide the necessary machinery for carrying out such an object.² It will not interfere in mere matters of internal administration.³

" Rules of the Union "

3. The manner of making, altering, amending and rescinding rules. Where the rules contain a provision that alterations thereof when carried by the stipulated majority are to be effectual, alterations made in accordance therewith will bind every member,⁴ including insane members,⁵ unless such alterations will have the effect of altering the substratum of the whole society.⁶ A slight deviation from the prescribed procedure in making the alteration will not invalidate the rule as amended,⁷ and in certain circumstances, an alteration may be binding on the members even though there is no rule specifically dealing with alteration of rules so long as such alterations are not inconsistent with the original purposes of the society.⁸ It is, however, generally advisable to make amendments strictly in accordance with the rules.⁹ Registration of an amended rule does not make it valid if it is otherwise invalid,¹⁰ and the amendment dates not

¹ *Amalgamated Society of Railway Servants v. Osborne* (No. 1) [1910] A.C. 87.

² *Burke v. Amalgamated Society of Dyers* [1906] 2 K.B. 583.

³ *Steele v. South Wales Miners' Federation* [1907] 1 K.B. at pp. 366, 368; *Macdonnell v. Gardiner*, 1 Ch.D. 13.

⁴ *Steele v. South Wales Miners' Federation* [1907] 2 K.B. 360.

⁵ *Burke v. Amalgamated Society of Dyers* [1906] 2 K.B. 583.

⁶ *Wilson v. Scottish Typographical Association* (1912) S.C. 534.

⁷ *Amalgamated Society of Engineers v. Jones* (1913) 29 T.L.R. 484; *Dunn v. Bevan* (1921), *Times Newspaper*, August 31.

⁸ *Steele v. South Wales Miners' Federation*, *supra*.

⁹ *Osborne v. Amalgamated Society of Railway Servants* [1909] 1 Ch. 163.

¹⁰ *Ibid.*, at p. 176.

from the date of registration but from the date of the resolution providing for the alteration.¹ The old rules remain in force until amendment takes place.²

Where rules for the purposes of a ballot have been approved under the provisions of the Trade Union Act, 1913, by a majority of the members of a trade union, whether registered or unregistered, voting for the purpose, such rules are to have effect as rules of the union, notwithstanding that the provision of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.³

All alterations of rules must be registered with the Registrar of Friendly Societies. A fee of 10s. for such registration must be paid.⁴

An alteration of the rules of a trade union may be either :

(a) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution or of more than one or all of those modes ; or,

(b) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.⁵

An application for the registration of a partial alteration of rules must be made by seven members of the trade

¹ *Osborne v. Amalgamated Society of Railway Servants* [1909] 1 Ch. at p. 176.

² *Howden v. Yorkshire Miners' Federation* [1903] 1 K.B. 308.

³ s. 4 (2) of the Trade Union Act, 1913.

⁴ Regulation (24), *infra*, p. 232.

⁵ Regulation (6), *infra*, p. 230.

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union.¹ Their application must be accompanied by a statutory declaration² and by a printed copy of the existing rules, and by the following documents :

(a) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked *O* and signed by each of the applicants.

(b) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked *O* and signed by each of the applicants.

The Registrar, before registering the partial alteration of rules, must ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all those matters which are required by the Trade Union Acts to be provided for by the rules of a registered trade union.³

The certificates of registry of a partial alteration must be delivered to the applicants,⁴ attached to one of the copies of the new rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules.⁵

An application for the registration of a complete alteration of rules must be made by seven members of the trade union.⁶ The application must be accompanied by a statutory declaration,⁷ and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked *P* and signed by each of the applicants. The Registrar before registering the new set of rules must ascertain that it provides for all matters

¹ Form C, *infra*, p. 237.

² Regulation (7), *infra*, p. 230.

³ Regulation (8), p. 230.

⁴ Form D, *infra*, p. 238.

⁵ Form D, *infra*, p. 238.

⁶ Form E, *infra*, p. 238.

⁷ Form F, *infra*, p. 239.

which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union.¹

The certificate of registry of a complete alteration of rules² must be delivered to the applicants, attached to one of the copies of the new set of rules.³

"Committee of Management" (Executive Committee)

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees⁴ thereunder and other officers.

A person under the age of twenty-one but above the age of sixteen may be a member of a trade union but cannot be a member of the committee of management, trustee, or treasurer of the union.⁵

"Investment of Funds"

5. A provision for the investment of the funds and for an annual or periodical audit of accounts.

The funds must be invested in authorised securities unless otherwise specifically provided. Investments for purposes outside the scope of the rules will be regarded as *ultra vires* and therefore illegal payments.⁶

"Inspection of Books"

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union. The members of a trade union are entitled to employ an accountant to inspect the books and accounts for them, provided that the accountant gives an undertaking that the information obtained will only be used for informing his clients of the

¹ Regulation (a), *infra*, p. 230.

² Form G, *infra*, p. 240.

³ Regulation (10), *infra*, p. 231.

⁴ The trustees need not be members of the union; see *Yorkshire Miners' Federation v. Howdon* [1905] A.C. 256 per Lord Davey at p. 271.

⁵ s. 9 of Trade Union Amendment Act, 1876.

⁶ *Bennett v. National Amalgamated Society of Painters* (1915) 31 T.L.R. 203; *Carter v. Society of Boultermakers* (1915) 60 Sol. J. 44.

result of the inspection.¹ The onus of showing that a member, who has applied to his union for permission to inspect the union books, through his accountant, is not acting bona-fide, lies on the union resisting the inspection.²

Members may also make inquiries for the purpose of ascertaining how the funds are to be divided on dissolution,³ and where there is any doubt as to the meaning of the rules, application should be made to the court to determine their construction.⁴

Circulating False Copies of Rules, etc., a Misdemeanour

Any person who, with intent to mislead or defraud, gives to any member or to any person intending or applying to become a member of a registered trade union, a copy of any rules or of any alterations or amendments of the same, other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, is to be deemed guilty of a misdemeanour. Similarly any person who with a like intent gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, is to be deemed guilty of a misdemeanour.⁵

Change of Name

A trade union may, with the approval in writing of the chief Registrar of Friendly Societies, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the

¹ *Novey v. Kepp* [1909] 1 Ch. 561; *Bevan v. Webb* [1901] 2 Ch. 59.

² *Dodd v. Marine Workers' Union* [1924] 1 Ch. 116.

³ *Re Printers' Amalgamated Trades Protection Society* [1899] 2 Ch. 184.

⁴ *In re Durham Miners' Association* (1900) 17 T.L.R. 39.

⁵ s. 18 of Trade Union Act, 1871.

- consent of not less than two thirds of the total number of members.

A change of name does not affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.¹

No trade union can be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public.²

The application for approval, and notice of change of name of a trade union, must be sent in duplicate,³ accompanied by a statutory declaration,⁴ to the chief registrar, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require. The chief or assistant registrar, before approving the change of name, must ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling the same as to be calculated to deceive. If the change of name be approved, the word "approved" is written at the foot or end of each copy of the application, and the same signed by the chief registrar or by such assistant registrar as the case may require, and transmitted by him to the central office for registry.⁵

The form of notice⁶ embodies certain requirements contained in s. 13 of the Trade Union Act, 1876, which provides that notice in writing of every change of name is to be signed by seven members and counter-signed by

¹ s. 11 of Trade Union Act, 1876.

² s. 13 (3) of Trade Union Act, 1871; see also *Rex v. Registrar of Friendly Societies* (1872) L.K. 7 Q.B. 741.

³ Form N, *infra*, p. 244.

⁴ Form O, *infra*, p. 245.

⁵ Regulation (16), *infra*, p. 231.

the secretary of the trade union changing its name and must be accompanied by a statutory declaration by such secretary that the provisions of the Act have been complied with. Until such change of name is so registered, it cannot take effect.

Amalgamation

Any two or more trade unions may become amalgamated together as one trade union if, in the case of each or every such trade union on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal.¹ This applies even though one or more of the amalgamating unions is unregistered²: and apparently even when no rule authorises amalgamation.³

A ballot is essential,⁴ and it must be properly conducted. Any irregularity in the conduct thereof will invalidate the amalgamation, even though it be registered as such by the Registrar of Friendly Societies.⁵ But there is nothing to prevent two or more ballots on the same question being taken within a short space of time if the question requires urgent reconsideration.⁶

Notice in writing of every amalgamation signed by seven members and countersigned by the secretary of each or every union party thereto and accompanied by a statutory declaration by each or every such secretary that the provisions of the Act⁷ have been complied with

¹ s. 12 of the Trade Union Act, 1876, as amended by s. 1 (1) of the Trade Union Act, 1917.

² s. 1 (2) of the Trade Union Act, 1917.

³ But see Fry J. in *Wolfe v. Matthews* (1882) 21 Ch.D. 194 at p. 195.

⁴ *Sheet Iron Workers' Society v. Boilermakers' Society* (1924) 40 T.L.R. 294.

⁵ *Booth v. Marine Workers' Union* [1926] 1 Ch. 904.

⁶ *Brodie v. Bowen* (1921) 38 T.L.R. 172.

⁷ The funds of the amalgamating unions may be dissolved or they may be merged into the funds of the new union, but without prejudice to the rights of creditors. See s. 12 of the 1876 Act.

must be registered at the central office, and until so registered, the amalgamation is not to take effect.¹

It would appear that a trade union amalgamating will not necessarily have to take a fresh ballot for political purposes under the 1913 Act, as in 1920 the Registrar of Friendly Societies granted a certificate, which included political objects, to the Amalgamated Engineering Union, a new amalgamation of existing engineering unions, without requiring a fresh ballot on political objects to be taken.

Annual Statement of Trade Union

A general statement² of the receipts, funds, effects, and expenditure of every registered trade union must be transmitted to the Registrar before the first day of June in every year. Such statement must show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union. The expenditure in respect of the several objects of the trade union must be shown separately and prepared and made out up to such date, in such form, and must comprise such particulars, as the Registrar may from time to time require. Every member of, and depositor in, any such trade union is entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there must be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of the above provisions, and also every

¹ Trade Union Act, 1876, s. 13; for form of notice, *vide infra*, p. 249.

² See Form A.R. 15, *infra*, p. 251.

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officer of the trade union so failing, is each liable to a penalty not exceeding £5 for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, is liable to a penalty not exceeding £50 for each offence.¹

The above provision requiring the transmission to the Registrar of annual returns by registered trade unions applies also to every unregistered trade union so far as respects the receipts, funds, effects, expenditure, assets and liabilities of its political fund.²

Failure to Transmit Required Notices

A trade union which fails to give any notice or send any document which it is required by law to give or send, and every officer or other person who is bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless he is proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than £1 and not more than £5 (and to an additional penalty of the like amount for each week during which the omission continues). Such penalty is recoverable at the suit of the chief or any assistant Registrar of Friendly Societies, or of any person aggrieved.³

Dissolution

The rules of every trade union must provide for the manner of dissolving the same, and notice of every dissolution of a trade union, under the hand of the secretary and seven members of the same, must be sent within

¹ Trade Union Act, 1871, s. 16.

² Trade Union and Trade Disputes Act, 1927, s. 4.

³ s. 15 of Trade Union Act, 1876.

fourteen days thereafter to the registrar, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and registered by him. It is provided, however, that the rules of any trade union registered before the passing of the 1876 Act are not to be invalidated by the absence of a provision for dissolution.¹

Although the words at the beginning of the above section, say "every trade union," would seem to indicate that the section applies to both registered and unregistered unions, it is thought that this can hardly be so. Otherwise it would mean that although there is no statutory obligation on an unregistered union to have rules at all, yet to comply with the above section, if it had no rules, it would have to make special rules providing for dissolution or, if it had rules, to register only such rules as provided for dissolution. Having regard to the proviso to the section, the court would doubtless construe the section as applying to registered unions only.²

A member who has been expelled from his union would have no right to participate in the distribution of funds which takes place on the dissolution thereof.³

Notice to be Given

When a trade union is dissolved, notice of the dissolution shall be given to the central office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require, in duplicate in Form S,⁴ and the central office or assistant registrar must return one copy to the trade

¹ s. 14 of Trade Union Act, 1876.

² See Blake and Smith (1906) 22 T.L.R. 698.

³ *Strick v. Swansea Tinsplate Co.* (1887) 36 Ch.D. 558; but see re *Printers' and Transferers' Protection Society* (1899) 2 Ch. 184.

⁴ p. 249, *infra*.

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union, endorsed with the word "registered," and duly authenticated.¹

Property of Trade Union Vests in Trustees

All property belonging to a registered trade union vests in the trustees, appointed for the time being, for the use and benefit of such trade union and the members thereof. Branch funds vest in the trustees of the branch or of the trustees of the trade union² if the rules of the union so provide.³ All such property is to be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests. Upon the death or removal of such trustees the union property vests in the succeeding trustees for the same estate and interest as the former trusts, without any conveyance or assignment whatsoever, except in the case of stocks and securities in the public funds of Great Britain and Ireland, in which case such stocks and securities must be transferred into the names of the new trustees. In all legal proceedings touching or concerning union property,⁴ the same must be taken to be the property of the said trustees without any further description.⁵

A registered trade union may hold personal property to any amount.⁶ The words of the Act are "all real and personal estate whatsoever" which refers to all property generally⁷ and "the property so held is the property of

¹ Regulation (21), *infra*, p. 232.

² Trade Union Act, 1871, s. 8 as amended by s. 4 of the Trade Union Act, 1876.

³ See *Cope v. Crossingham* [1909] 2 Ch. 148.

⁴ e.g. a claim for damages against the union, see *Linaker v. Pilcher* 70 L.J., K.B. 396, or an official suing for salary; see *Curie v. Lester* 9 T.L.R. 480.

⁵ s. 8 of the Trade Union Act, 1871.

⁶ *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426, 441; per Farwell L.J. in *Osborne v. Amalgamated Society of Railway Servants* [1909] 1 Ch. 163 at p. 191.

⁷ *Curie v. Lester* (1893) 9 T.L.R. 480; *Linaker v. Pilcher* (*supra*).

the union ; the union is the beneficial owner."¹ It should be observed that trustees need not be members of the union.²

In cases where the trustee of a union or branch thereof has any stock transferable at the Bank of England standing in his name (either jointly or solely) the following provisions apply :

In the event of such trustee :

- (1) Being either absent from Great Britain or Ireland ; or
- (2) becoming bankrupt ; or
- (3) filing any petition ; or
- (4) executing any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors ; or
- (5) becoming a lunatic ; or
- (6) being dead ; or
- (7) being unknown to be alive or dead ; or
- (8) being removed from his office of trustee ;

the registrar, on written application (in a prescribed form)³ from the secretary and three members of the union or branch, on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch. The transfer must be made by the surviving or continuing trustee, and, if he refuses or is unable to make the transfer, or if there be no such trustee, then, if the registrar so directs (such direction being in a prescribed form),⁴ the transfer must be made by the accountant-general or deputy or assistant accountant-general of the Bank of England or the Bank of Ireland as the case may be. The Governors

¹ Per Lord Lindley in *Taff Vale Case* (*supra*), at p. 444.

² Per Lord Davey in *Howden v. Yorkshire Miners' Federation* [1905] A.C. 256 p. 271.

³ For form, *vide infra*, p. 247.

⁴ For form, *vide infra*, p. 248.

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and Companies of the Bank of England and Bank of Ireland respectively are to be indemnified against any claim or demand on the part of any person injuriously affected by any act done by them under the above provision.¹

Accounts

A trustee of any registered trade union is not liable to make good any deficiency which may arise or happen in the funds of such trade union, but he is liable only for the moneys which may be actually received by him on account of such trade union.²

Every treasurer or other officer of a registered trade union, at the times appointed by the rules or upon being required so to do, must render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union. The said trustees must have the account audited by some fit and proper person or persons appointed by them; and the treasurer, if required, upon the said account being audited, must forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and must also, if required, hand over to such trustees all union property in his hands or custody. If he fail to do so the trustees of the said trade union may sue such treasurer in any competent court³ for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union and for any union property in his hands or custody,

¹ s. 4 of Trade Union Act, 1876; Regulations (17)-(20), *supra*, p. 232.

² s. 22, *ibid.*

³ e.g. a county court, but not a police court.

leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union. In any such action the said trustees are entitled to recover their full costs of suit, to be taxed as between attorney and client.¹

Punishment for Withholding Money, etc.

If any officer, member, or other person, being, or representing himself to be, a member of a registered trade union or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, such officer, member, or other person may be ordered by the court to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding £20, together with costs not exceeding 20s. In default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs, the court may order the person convicted of such default to be imprisoned, with or without hard labour, for any time not exceeding three months.² The trade union, or, in Scotland, His Majesty's Advocate, may also proceed criminally by indictment against the party; but no person may be proceeded against by indictment, unless a conviction has been

¹ s. 11 of Trade Union Act, 1871.

² Despite the Summary Jurisdiction Act, 1879 (s. 6), the debt is not a civil debt and the power of commitment, therefore, can be enforced. *Rex v. Truscott* (1900) 81 L.T. 188.

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previously obtained for the same offence.¹ "Summary remedies for misapplications of the trade union's property are provided, but there is nothing to oust the jurisdiction of the superior courts."²

A treasurer who fails to account for union property which has been in his possession may be held *prima facie* to have withheld or misapplied the value thereof,³ but an officer of a dissolved union cannot be prosecuted for refusing to give up the books and papers to a new union; containing a large number of members of the old union⁴; and an assignee for the benefit of creditors of an official indebted to the union cannot be prosecuted by the union in respect of money owing from the official.⁵

It has been held that failure to account is *prima facie* evidence of wilful withholding within the above section.⁶ Withholding is a continuing offence, so that the six months' limit for commencing proceedings does not apparently apply.⁷ If proceedings are taken under s. 12 and a conviction is obtained, civil proceedings cannot afterwards be taken under s. 11,⁸ but it is doubtful if this applies when proceedings are taken against a union official under the Falsification of Accounts Act, 1875.⁹

Other remedies are available to both registered and unregistered unions under the Falsification of Accounts Act, 1875, and the Larceny Act, 1868.

Nomination

A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered

¹ (1871) 34 & 35 Vict., c. 31, s. 12; (1876) 39 & 40 Vict., c. 22, s. 5.

² Per Lord Lindley in *Taff Vale Railway Company v. Amalgamated Society of Railway Servants* (1901) A.C. 426 at p. 444.

³ *Rex v. Bennett* (1894) 63 L.J., M.C. 181; *Rex v. Smith* (1862).

⁴ *Patrick v. Gilbert* (1870) 18 W.R. 315.

⁵ *Ex parte O'Donnell v. Gladstone* (1866) 35 L.J., M.C. 99.

⁶ *Rex v. Bennett*, *supra*.

⁷ Per Field J. in *Knight v. Whitmore* (1885) 53 L.T. 233 at p. 259.

⁸ 38 & 39 Vict., c. 24; *United Builders' Labourers v. Stevenson* (1906), *Times Newspaper*, February 7.

at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding £100 is to be paid at his decease. Such nomination may from time to time be revoked or varied by a writing under his hand similarly delivered or sent. On receiving satisfactory proof of the death of a nominator, the trade union must pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.¹

How a Nomination may be made

A nomination may be partly printed, and if made in a book kept at the office is to be taken to be delivered at such office.*

Provisions in Case of Intestacy and no Nomination

If any member of a registered trade union, who is entitled from the funds thereof to a sum not exceeding £100, dies intestate and without having made any nomination which remains unrevoked at his death, such sum is to be payable, without letters of administration, to the person who appears to a majority of the directors, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same.*

Provision for Illegitimacy

If any member of a registered trade union, who is entitled to make a nomination, is illegitimate, and has died intestate, and without having made any such nomination subsisting at his death, the directors may pay the sum which such member might have nominated to or

¹ s. 10 of the Trade Union Act, 1876, as amended by the Provident Nominations and Small Intestacies Act, 1883.

* s. 4 of the Provident Nominations Act, 1883.

* s. 7, *ibid.*

among the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate. If there are no such persons, then the deposits are to be dealt with as the Commissioners of the Treasury may direct.¹

Payments made by Directors under Powers above given

All payments made by directors under the powers aforesaid are to be valid as against the next of kin or other lawful representative of the deceased member, but such next of kin, representative, or claimant may bring an action for recovery of such money, so paid as aforesaid, against the person or persons who have received the same.²

In *Crocker v. Knight*³ it was held that s. 4 of the 1871 Act prevents the court from entertaining legal proceedings to enforce the foregoing provisions as to nomination. The plaintiff was the widow of a member of a registered trade union who had been nominated by her husband to receive his funeral money from the society. Lindley L.J. said :⁴

"The sum, sought to be recovered here, is payable under a rule which provides a benefit to a member within section 4 of the 1871 Act. So far, therefore, this action cannot be maintained ; but section 10 of the 1876 Act is in terms one, which seems to impose a statutory obligation on the trade union to pay to the nominee the amount to which the member was entitled under the rules. The question is whether the words, 'the trade union shall pay,' constitute an obligation which can be enforced by action. Now I think the object of this section was not to depart from the policy of the 1871 Act, but was entirely different, namely, to enable persons of sixteen years of age and upwards, without the necessity of making a will and incurring the expense of probate, to give away any

¹ s. 8, of the Provident Nominations Act, 1883.

² s. 9, *ibid.*

³ [1892] 1 Q.B. 702.

⁴ *Ibid.*, at p. 707.

small sums of money, that may be due to them from the trade union. Under section 10, the money recoverable by a member from the trade union is to go to the nominee of that member, even though he may be so young as seventeen or eighteen years of age, and I do not think, looking at the first and other sections of the 1876 Act, that we can find any sufficient indication of any intention to depart from the terms of section 4 of the 1871 Act, so as to alter the policy of the Legislature, which was to prevent the introduction of legal proceedings into the affairs of trade unions, and to save trade unions from being subjected to the expense of litigation."

"The question," continued his Lordship, "really turns on the construction of the two Acts. We are asked to read section 10 of the second Act as overriding section 4 of the first, and to hold that there is, therefore, a distinct statutory obligation on the part of the trade union to pay; but when we are told by the Legislature to read the two Acts as one, we must read them in such a way as to make them consistent. In my opinion, the trade union is subject to no more obligation to pay than it was before the Act of 1871 was passed." Kay L.J., in concurring, said: "If section 10 of the 1876 Act had meant to repeal section 4 of the 1871 Act, I should have expected to find in it some such words as 'notwithstanding anything contained in section 4 of the principal Act, such nominee shall be entitled to sue.'"

Purchase of Land

A registered trade union or branch thereof may purchase or take upon lease in the name of the trustees for the time being land to any extent,¹ and may sell, exchange, mortgage or let the same. No purchaser, assignee, mortgagee or tenant need inquire whether the trustees have authority so to act, and the receipt of the

¹ [1892] 1 Q.B. 702 at p. 708.

² Law of Property Act, 1922 (12 & 13 Geo. V, c. 16, s. 106).

trustees is a sufficient discharge for the money arising therefrom.¹ But a devise of land to a trade union is void (i.) as not being within the above power and (ii.) as being in the nature of a perpetuity.² Apparently an unregistered union is incapable of holding land at all.³

Civil Servants and Trade Unions : Restrictions on Civil Servants

Restrictions on the right of civil servants to become members of trade unions is imposed by s. 5 of the Trade Union and Trade Disputes Act, 1927, which provides that an established civil servant (i.e. one who is serving in an established capacity in the permanent service of the Crown) must not be a member of an organisation, of which the primary object is to influence or affect the remuneration and conditions of employment of its members (1) if its membership is not confined to persons employed by or under the Crown, or (2) if its objects include political objects, or (3) if it is an organisation which is associated directly or indirectly with any political party or organisation. Such restrictions also apply to a federation comprising any such organisation. It is, however, provided that such restrictions are not to apply :

(a) to an established civil servant who at the time of the commencement of the Act has been a member for more than six months of a trade union under the rules whereof there had on April 4, 1927, accrued or there was accruing to him the right to any payment during incapacity or by way of superannuation, or on the death of himself or his wife or as provision for his children, or (b) to any person employed⁴ at the commencement of the Act⁵ by or under the Crown

¹ s. 7 of the 1871 Act.

² *Re Amos Carrier v. Price* [1891] 3 Ch. 159 at 165, but see the Mortmain and Charitable Uses Act, 1888.

³ *Ibid.*, p. 159.

⁴ Sometimes called the "hired worker," as distinguished from the "established worker."
⁵ 1927.

who thereafter becomes an established civil servant, who, at the date he so becomes established, is a member of a trade union under the rules of which there has at that date accrued or begun to accrue to him a right to any future payment during incapacity or by way of superannuation, or on the death of himself or his wife or as provision for his children; any such person must not, however, occupy a position of supervision or management in his union, e.g. he must not be an official or member of the E.C. of the union, or (c) to a person who in addition to being an established civil servant is also engaged in some other employment or occupation. Such a person may be a member, delegate or representative of a trade union or other organisation, of which the primary object is to influence or affect the remuneration or conditions of employment of persons, other than those who are in the permanent employment of the Crown, who are engaged under contracts of service in that employment or occupation. So that such person may be a member or official of the union or other organisation catering for the subsidiary occupation in which he is engaged; e.g. a postman who is a cinema attendant in his spare time could be a member of the Workers' Union in that capacity, but not so as to interfere or conflict with his duties as a postman.

In other words (subject to the above exceptions) the effect of the section will be to prevent any civil servant, e.g. a postman or an established dockyard worker, from being a member or continuing his membership of any of the postal, transport, engineering or other unions, which include in their memberships those who are in the permanent employment of the Crown, unless his union (1) confines its membership to persons employed by or under the Crown, (2) ceases to affiliate to the

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Trades Union Congress, the Labour Party or any other outside organisation, the membership of which include persons other than persons employed by or under the Crown, and (3) erases from its objects political objects.

Any contravention of the section is to disqualify any such person from continuing to be a member of the Civil Service, that is to say he would not only be liable to lose his employment, but also his right to a pension or superannuation, and any other benefit to which he may be entitled. It is, however, provided that the disqualification of a civil servant for contravening the above regulations is not to take effect in the case of a first offence if within one month after warning he ceases to contravene such regulations.

Employment by Local and other Public Authorities: Trade Union Membership

S. 6 (1) of the Trade Union and Trade Disputes Act, 1927, provides¹ that it is unlawful for any local or other public authority² to make it a condition of the employment or continuance in employment of any person that he must or must not be a member of a trade union. It is equally illegal for any local or public authority to make it a condition of any contract made or proposed to be made with such authority, or to the consideration or acceptance of any tender in connection with such a contract, that those who are parties to such contract with the authority shall or shall not employ trade unionists.³ Any condition imposed to the contrary will be void and therefore unenforceable.⁴ Nor is any employee of such an authority to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees by reason of his being or not being a member of a trade union.⁵

¹ *Vide infra*, pp. 223-8.

² For definition of the term "public authority" *vide infra*, p. 258.

³ s. 6 (3).

⁴ s. 6 (1).

⁵ s. 6 (2).

CHAPTER III

PROCEDURE AND LIMITATIONS OF COURT'S JURISDICTION

Procedure : Status

As previously stated,¹ a trade union occupies an anomalous position, so far as its legal status is concerned. It is neither a corporation nor an individual nor a partnership between a number of individuals,² but, since the passing of the Act of 1871, remains a voluntary association of which the law can take no special cognisance as a collective body. The object apparently being to make careful provision that it should not have any corporate existence or capacity whatever.³ At the same time, although the intention of the Act of 1871 was to avoid constituting trade unions as corporations, the Legislature in giving a trade union the capacity to own property and the capacity to act by agents has, without incorporating it, created a legal entity possessing some of the essential qualities of a corporation. It may be said, therefore, to be a sort of quasi-corporation,⁴ which can act by its agents.

The Act of 1871 is as it were the charter of incorporation of the trade unions,⁵ for thereby they obtain their statutory immunities and privileges,⁶ and in their

¹ See *supra*, chap. ii.

² Per Farwell L.J. in *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] 1 K.B. 170.

³ Per Lord Inglis in *Aitken v. Associated Carpenters of Scotland* (1885) 12 R. (Ct. of Sess.) 1206.

⁴ Per Cozens Hardy M.R. in *Osborne's Case*, *supra*.

⁵ Per Lord Halsbury in *Osborne's Case* (*supra*) at p. 92.

⁶ Per Lord MacNaughten, *ibid.* at p. 94.

dependence on Statute, trade unions are in the same position as all corporations, municipal or commercial, including in the latter all limited liability companies created under the Companies Acts.¹

So far as a registered union is concerned, it may be said to be "a legal entity, and though not in the strict sense a corporation it is a newly created body created by a Statute". . . "anomalous in that, although consisting of a fluctuating body of individuals and not being incorporated, it can own property and act by agents." An unregistered association, however, has apparently no such corporate existence.²

Civil Procedure

Right of Property Vested in Member

A trade union, although it is a legal entity of a quasi-corporate character, yet remains a voluntary association. As such, it is not subject to the interference of the courts so far as its internal affairs are concerned, owing to the reluctance of the courts to interfere in such matters. Where, however, it can be shown by a member of an association that he has been deprived of his civil rights, whether of property or otherwise, then the court will interfere. Thus, in *Rigby v. Connol*,³ Jessel M.R. said "the foundation of the jurisdiction is the right of property vested in the member of a voluntary association and of which he is unjustly deprived." As regards rights other than of property, in *Osborne's Case*,⁴ Moulton L.J. stated "there are many rights which could not be called rights of property which nevertheless the law will protect. . . . I can see no reason why memberships of an association should not have the same legal protection as would

¹ Per Lord Atkinson, *ibid.* at p. 104.

² *Taff Vale Case*, *supra*, per Lord Brampton at p. 440.

³ *Osborne's Case* (No. 1) [1900] 1 Ch. 163, per Farwell L.J. at p. 191.

⁴ *Wilson v. Scottish Typographical Association* (1921) 1 Sc. L.T. 253.

⁵ [1880] 14 Ch.D. 482 at p. 487.

⁶ *Osborne's Case* (No. 2) [1911] 1 Ch. 340 at p. 362.

be given in the case of an association where the members had a beneficial interest in the funds. In the case of a trade union there is undoubted interest in property even in the narrow sense of the word." In the same case Cozens Hardy M.R. expressed the view that a right of voting was a property right.¹

In those cases where it is competent for the court to entertain an action either by or against a trade union, it is important to consider the various methods of procedure which may be followed.

Representative Actions

(1) It would appear that a union cannot sue or be sued for damages in a representative action, either in contract or in tort.² A representative action³ would, however, lie where it was sought to restrain the wrongful application of union funds.⁴

The persons selected to be plaintiffs and defendants must be persons who from their position may be fairly taken to represent the trade union.⁵ They should, if possible, be persons who are managers of the union, having control over it or its funds, such as the executive committee or the trustees.⁶ The president, vice-president and secretary have been held sufficiently representative without the trustees.⁷ In cases where the persons selected are not sufficiently representative to sue as representatives the court may add others to remedy the

¹ Osborne's Case (No. 2) [1911] 1 Ch. 540 at p. 554.

² *Hardie and Lane v. Chilton* 43 T.L.R. 709, but see Lord Lindley in *Taff Vale Case* (*supra*) at p. 443.

³ Where there is a number of persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, on behalf of or for the benefit of all persons so interested, in a representative action.

⁴ *Parr v. Lancashire and Cheshire Miners' Federation* [1913] 1 Ch. 366.

⁵ See *Taff Vale Case*, *supra*.

⁶ Per Lord MacNaughten, *ibid.*, p. 439.

⁷ *Parr v. Lancashire and Cheshire Miners' Federation* (*supra*), p. 375

deficiency¹; persons may be joined as defendants even against their will.²

A branch secretary is not a person who can be said to be properly representative.³

(2) The trade union may sue or be sued in its registered name in contract or in tort (e.g. libel or slander).⁴ Although a registered trade union is not a corporation, it has a registered name, which is nothing more than the collective name of its members,⁵ and it is competent to the Legislature to give any association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents with the necessary correlative of liability for the acts of such agents to be enforced against the society in its registered name.⁶

A registered union the purposes of which are not in restraint of trade and which is therefore an association lawful at common law, when being sued in respect of an agreement unenforceable under s. 4 of the Act of 1871, should not be sued in its registered name, as the Act of 1871, under the provisions of which it is registered, cannot be relied upon.

(3) As regards registered unions, the action may be brought or defended by the trustees or other officers duly authorised by the rules to bring or defend any action or prosecution concerning the property of the union.⁷ The

¹ *Charnock v. Court and Others* [1899] 2 Ch. 35.

² *Wood v. McCarthy* [1893] 1 Q.B. 775; *Scottish Co-operative Wholesale Societies Ltd. v. Glasgow Fishers' Trade Defence Association* (1898) 35 Sc.L.R. 645.

³ *Thomas v. Portsmouth "A" Branch of the Ships Construction, etc., Association* (1912) 28 T.L.R. at pp. 373-4.

⁴ *Williams v. Beaumont* 20, Bing 260; *South Hetton Coal Co. v. N.E. News Association* [1894] 1 Q.B.D. 133.

⁵ Per Lord MacNaughten, *Taff Vale Case* (*supra*), p. 440.

⁶ Per Farwell J. in *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426 at pp. 429-31.

⁷ s. 9 of the Trade Union Act, 1871.

trustees may also be added as defendants by the court.³

When trustees are sued personally as the legal owners of the property of the union, they may be indemnified for damages awarded against them out of the funds of the union.⁴

As to the liability of a union and its trustees in tort, see chap. iv., *infra*.

In Scotland trade unions may sue or be sued in the general name of the trade union with or without the addition of the names of three of the members.⁵

Right of Trade Union to Finance Actions of Members

A trade union may, out of its funds, pay the legal expenses of a member in connection with any matter in which there is a common interest between the member and the trade union. Thus it would be legitimate and justifiable for a trade union to intervene on behalf of one of its members who has been dismissed by his employer without notice, in order to recover his wages,⁶ and a workman desiring to make a claim against his employer under the Workmen's Compensation Acts may be helped by his union.⁷ But where there is no common interest between the member and his union, the union cannot bring an action, even with his consent, and to do so may amount to the offence of "maintainance."⁸ Thus it has been held that a trade union has no legal interest in a slander action brought by one of its officers, although that officer was slandered in his official capacity as well as personally.⁹

A rule of a union that legal aid shall be given to a

³ *Yorkshire Miners' Association v. Howden* [1905] A.C. 256.

⁴ *Linaker v. Pitcher* (1901) 84 L.T. 421.

⁵ *Agnew v. Addison* (1892) 20 R. 191.

⁶ Per Alverston L.C.J. in *Greig v. National Amalgamated Union of Shop Assistants* (1906) 22 T.L.R. 274 at p. 275.

⁷ *Allen v. Francis* 7 B.W.C.C. 779, per Cozens Hardy M.R. at p. 775; *Bobbie v. Crosby* 8 B.W.C.C., p. 236, per Swinfen Eady L.J. at p. 238.

⁸ See p. 258, *infra*.

⁹ *Oram v. Hutt* [1914] 1 Ch. 98; *Alabaster v. Harness* [1895] 1 Q.B. 339; *Neville v. London Express Newspaper Ltd.* [1919] A.C. 368.

member does not constitute an "agreement to provide a benefit to a member" within the meaning of s. 4 of the 1871 Act and is therefore enforceable by the court,¹ and such an agreement if made by a branch may bind the parent union.²

Relation of Trade Union to Branch

A trade union may bring an action against the trustees of a branch to determine the title to property held by the branch trustees:³ and as already stated, the branch trustees may be restrained by injunction from dealing with the branch funds, at the suit of the trustees of the parent union.⁴

Criminal Procedure

As regards procedure in criminal matters in England and Ireland, every offence and penalty which is summarily punishable or recoverable under the Trade Unions Acts, 1871 and 1876, or the Conspiracy and Protection of Property Act, 1875, must be prosecuted and recovered in the manner provided by the Summary Jurisdiction Acts.⁵ The jurisdiction under the 1871 Act may be exercised for the place where the registered office of the trade union is situate or where the offence has been committed. The costs on summary conviction must not exceed £1,⁶ and they and all offences and penalties may be prosecuted and recovered summarily.⁷ Where a person is accused before a court of summary jurisdiction of any offence made punishable by the 1875 Act, and for

¹ *Lees v. Lancashire and Cheshire Miners' Federation* (1906), *Times* Newspaper, June 20.

² *MacKendrick v. National Union of Dock Labourers* (1911) 48 S.L.R. 17.

³ *Madden v. Rhodes* [1906] 1 K.B. 534; see also *Barrett v. Markham* (1872) 41 L.J., M.C. 118.

⁴ *Cope v. Crossingham* [1909] 2 Ch. 148.

⁵ (1871) 34 & 35 Vict., c. 31, s. 19; (1875) 38 & 39 Vict., c. 86, s. 10; (1876) 42 & 43 Vict., c. 49; (1884) 47 & 48 Vict., c. 43. As to summary procedure generally, see *Stone's Justices' Manual*, 57th ed.

⁶ (1871) 34 & 35 Vict., c. 31, s. 19.

⁷ (1876) 39 & 40 Vict., c. 22, s. 5. *Stone's Justices' Manual*, 57th ed. p. 1515.

which a penalty of £20 or imprisonment is imposed, the accused may, on appearing before the court, declare that he objects to being tried for such offence summarily and may claim to be tried by indictment. The court must thereupon deal with the case in all respects as if the accused were charged with an indictable offence, and not an offence punishable summarily, and the offender may be prosecuted on indictment accordingly.¹

Limitation of Court's Jurisdiction : Trade Union not Unlawful for Civil Purposes

As previously stated,² the purposes of a trade union are no longer, merely by reason that they are in restraint of trade, unlawful so as to render void or voidable any agreement or trust. The effect of this provision, so far as the civil law is concerned, is to legalise any trade union which is unlawful at common law by reason of its being in restraint of trade, and gives to the trade union a legal identity which enables it to enter into any agreement and trust enforceable in courts of law or equity.³ In a subsequent provision of the same Act,⁴ it was, however, provided that nothing in the Act was to enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for a breach of any of the following agreements, namely :

(1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed :

(2) Any agreement for the payment by any person of any subscription or penalty to a trade union :

(3) Any agreement for the application of the funds of a trade union.

¹ (1875) 38 & 39 Vict., c. 86, s. 9. In trial by indictment it is not necessary to aver in the indictment that the defendant elected to be so tried. *Rex v. Chambers* (1896) 18 Cox C.C. 401.

² *Supra*, p. 11.

³ s. 3 of the Trade Union Act, 1871.

⁴ s. 4, *ibid.*

- (a) To provide benefits to members ; or,
- (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolution of such trade union ; or,
- (c) To discharge any fine imposed upon any person by sentence of a court of justice ; or,
- (4) Any agreement made between one trade union and another or,
- (5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

Thus the effect of the above section is to preclude any union unlawful at common law, in spite of the provisions of s. 3, from enforcing any of the above-mentioned agreements. It will be observed, however, that the above provision does not affect a trade union whose purposes are not unlawful at common law as being in restraint of trade, as such a trade union is a lawful entity apart altogether from the Trade Union Acts, so that the court may entertain an action to enforce its agreements notwithstanding the above provision.¹ The question whether a trade union is lawful at common law may, therefore, be of practical importance whenever it is sought to enforce any of the above-mentioned agreements. Every case in which it is sought to prevent the court from exercising jurisdiction involves two propositions : (a) that the society is at common law an unlawful association and (b) that the action is a legal proceeding which no court can entertain, having regard to s. 4 of the Act of 1871 ; and if either of these propositions is

¹ Per Buckley L.J. in *Osborne v. Amalgamated Society of Railway Servants* [1911] 1 Ch.D. 540 at p. 566.

well founded the action must fail.¹ S. 4, however, only limits the jurisdiction to give relief in certain cases. It affords no bar to any party who claims to be interested in contracts which are legally valid coming to the courts to obtain a pronouncement as to his rights thereunder.² Consequently the courts will construe the meaning of the rules of a union even though they cannot give relief, e.g. as to whether the rules authorise strike pay,³ or as to the right of a member to inspect the books,⁴ or as to the distribution of funds on dissolution.⁵ It will be observed that the above-mentioned agreements are what may be called "domestic" agreements between trade unions and their members or between one trade union and another. Thus, while a member, whose union refuses to pay him any of the benefits payable to him under the rules, or reduces the amount thereof, even in breach of rule, has no remedy, it is equally true to say that a union, whose member falls into arrears with his contributions, or refuses to pay a fine imposed on him under the rules, also possesses no remedy, except perhaps that of expulsion. Reference to the Minority Report of the Royal Commission on Trade Unions, 1869, throws some light on the matter as it contains a recommendation that while trade unions should be given some legal status the courts should be restrained from interfering in purely domestic inter-union matters.

"Employ or be Employed"

The agreements here referred to are agreements between members of a trade union as to the conditions

¹ A trade union was held to be lawful at common law in the following cases (*inter alia*): *Swaine v. Wilson* [1899] 24 Q.B.D. 252; *Osborne v. Amalgamated Society of Railway Servants* [1911] 1 Ch.D. 540.

² Per Cozens Hardy M.R. in *Osborne's Case* at p. 511.

³ Re Durham Miners' Association.

⁴ *Norrey v. Keep* [1909] 1 Ch. 561; see also *Williams v. Cotter*, *Times* Newspaper, May 8, 1925.

⁵ *Printers' Trade Society* [1899] 1 Ch. 184.

of employment, e.g. wages, hours and other arrangements between the employer and employee, and such agreements do not include conditions upon which a man shall seek employment.¹ In an action to restrain a trade union from expelling a member who was employed under a co-partnership scheme, the member succeeded on the ground that the rules did not contain any agreement as to conditions upon which he was to be employed and that otherwise no breach of rule justifying expulsion was proved.²

" Payment of any Subscription or Penalty "

This provision definitely precludes a union recovering from a defaulting member any subscription, contribution or fine due from such member under the rules of the union. In such a case the union has no remedy at law and may only expel the defaulting member in accordance with the rules.³

" Benefits "

The word " benefit " refers to benefits such as strike and sick pay, it does not include indemnity for the costs of an appeal in a compensation case.⁴ It includes, however, burial benefits.⁵

Such benefits cannot be recovered by a member if the union fails to pay them.

" To Members "

It has been held that the dependant of a deceased member suing in his own right in respect of a claim under

¹ Per Phillimore L.J. in *Baker v. Inghall* [1911] 2 K.B. 132.

² *Brashear v. Amalgamated Society of Carpenters and Joiners* [1925] A.C. 440.

³ See *Mallet v. United French Polishers' London Society* (1904) 91 L.T. 133.

⁴ *Law v. Lancashire and Cheshire Miners' Association* (1906), *Times Newspaper*, June 20.

⁵ *McClaren v. National Union of Dock Labourers* (1917) 55 Sc.L.R. 763.

⁶ A person becomes a member of a union on acceptance of his entrance fee and contributions, together with receipt by him of card of membership; see *Parv v. Lancashire and Cheshire Miners' Federation* [1913] 1 Ch. 366, at p. 373.

the rules is not a "member" within s. 4 and that consequently he is not debarred from bringing his action.¹ The nominee and executor of a deceased member are, however, apparently within the prohibition.²

"Between one Trade Union and Another"

This would apparently render unenforceable, agreements made between employers' federations and workmen's trade unions. In *McCusky v. Cole*³ an injunction to restrain expulsion of a trade union from membership of a federation of trade unions was refused on the ground that it would amount to a direct enforcement of an agreement between one trade union and another.

"Directly Enforcing"

The word "directly" means enforcing by direct order as distinguished from enforcing by the recovery of damages for the breach.⁴ In *Rigby v. Connol*⁵ a member of the union, who was alleged to have broken the rule as to apprenticeship and who, having refused to pay the fine imposed in consequence of such breach, was expelled from membership of the union, brought an action against the committee and trustees of the union, claiming to be entitled to participate in its benefits and that the defendants might be restrained from excluding him from such participation. It was held that as the action was brought to enforce an agreement between members of a trade union "to provide benefits to members," and as, apart from the Act, the union was an illegal association, the plaintiff was not entitled to relief.

¹ *Love v. Amalgamated Society of Lithographic Printers* (1912) S.C. 1078.

² *Crocker v. Knight* [1892] 1 Q.B. 702; *Burke v. Amalgamated Society of Dyers* [1906] 2 K.B. 583.

³ [1922] 1 Ch. 7.

⁴ Per Buckley L.J. in *Cope v. Crossingham* [1909] 2 Ch. 148.

⁵ (1880) 14 Ch.D. 482.

On the other hand, an action by the union trustees for an injunction restraining the trustees of a branch of the union from applying funds contrary to the union rules is not a "direct enforcement," as it is merely a means of preserving the *status quo*.¹ So also an injunction will lie to restrain members from misapplying the funds of the union, as the object of the action is not directly to enforce any agreement to provide benefits but at most only to do so indirectly.² The distinction is made clear in the case of *Cope v. Crossingham*,³ in which the plaintiffs, the union trustees of a registered union, unlawful at common law, brought an action against trustees of a branch claiming an injunction restraining the branch trustees from applying the funds otherwise than in accordance with the rules of the union, and for the administration by the court of the funds and property of the branch. It was held that the action, apart from the claim for administration, was not instituted with the object of directly enforcing an agreement within the meaning of s. 4 of the 1871 Act, but it was held that the court had no jurisdiction to make an order for payment which would be an administration of the funds, though it would, if necessary, grant an injunction.

On the other hand, where a member of a registered trade union had been expelled by a resolution of the executive committee and proceedings were taken by him to obtain reinstatement on the ground that the resolution of expulsion was *ultra vires* and void, it was held that the action was not a proceeding instituted with the object of directly enforcing an agreement for the application of the funds of the union "to provide

¹ *M'Claren v. Miller* (1880) 1 R. 867.

² *Wolfe v. Matthews* (1882) 21 Ch. D. 194; *Howden v. Yorkshire Miners' Federation* [1903] 1 K.B. 308.

³ [1909] 2 Ch. 148.

benefits for members " and that the action was therefore maintainable.¹

An action on an account stated is not a " direct enforcement " within s. 4 of the 1878 Act.²

In cases of expulsion the rules must be strictly followed,³ as they constitute the terms of the agreement between the union and its members,⁴ but a breach of the contract contained in the rules will not give the injured member a right of action for damages against the union. The committee of the union is the agent of all the members, and the injured member cannot recover from the other members damages for the acts of the committee.⁵ Where there is a rule providing that a member may be expelled if his conduct is injurious to the union, a fair inquiry must be made and the member given an opportunity of stating his case,⁶ but if natural justice is satisfied, and there is no evidence of bias or malice on the part of the domestic quorum, their decision cannot as a rule be questioned.⁷ Where the member has been expelled because of his refusing to take part in a strike declared to be illegal under s. 1 of the Trade Disputes and Trade Union Act, 1927, the expelled member may be reinstated by the court.⁸

A declaration that a resolution of expulsion is *ultra vires* does not lie within the jurisdiction of a County Court judge, unless accompanied by a money claim not exceeding £100.⁹

¹ Osborne's Case, *supra*.

² *Evans & Co. Ltd. v. Heathcote* [1918] 1 K.B. 418.

³ *Fisher v. Keane* (1878) 11 Ch.D. 353.

⁴ *Strick v. Swansan Tinplate Co.* (1887) 36 Ch. D. 558.

⁵ Per Swinfen Eady L.J. in *Kelly v. National Society of Operative Printers* (1915) 30 T.L.R. 632. But *vide infra*.

⁶ *Labouchere v. Wharnclyffe* (1879) 13 Ch. 346; *Wolstenholme v. Amalgamated Musicians' Union* [1920] 2 Ch. 388; see also *Young v. Ladies' Imperial Club* [1920] 2 K.B. 523.

⁷ *Thomson v. B.M.A.* [1924] A.C. 764.

⁸ s. 2. ⁹ *Rex v. Cheshire County Court Judge* [1921] 2 K.B. 694.

Protection of Persons Refusing to Take Part in Illegal Strikes

It is provided by s. 2 (1) of the Trade Union and Trade Disputes Act, 1927, that no member of a trade union who refuses to take part in a strike declared by the Act to be illegal is to be expelled¹ from the union or deprived of any benefit or otherwise placed under any disability, notwithstanding anything to the contrary in the rules of the union. In effect, the provision takes away from the union the right of expulsion or fine, even though the rules, which constitute the agreement between the union and the members, are broken by the members concerned. In other words, the union is forbidden to enforce its contract with the members, although the member has committed a breach thereof.

The protection of trade unions from action for the recovery of benefits by members is repealed in cases where such members have refused to take part in an illegal strike, and in cases of expulsion damages in lieu of reinstatement may be ordered to be paid to the expelled member out of the funds of the unions.² This provision not only alters s. 4 of the 1871 Act (*supra*), which prohibits the courts from entertaining actions for recovery of benefits brought by members, but also the common law, which prevents a man obtaining damages from his own society on the ground that the society is the agent of its members.³

The above provisions as to the recovery of benefit or the awarding of damages to members in cases arising out of any illegal strike are to apply retrospectively, so as to cover any strike which took place subsequent to May 1, 1926, which would have been illegal under s. 1 of the 1927 Act.⁴

¹ As to expulsion in other cases, see *supra*, pp. 65, 66.

² s. 2 (2) of the 1927 Act.

³ See Kelly's Case, *supra*, p. 64.

⁴ s. 2 (3) of the 1927 Act.

Injunction at the Suit of the Attorney-General

Moreover s. 7 of the Trade Disputes and Trade Union Act, 1927, provides that without prejudice to the right of any person having a sufficient interest in the relief sought to sue or apply for an injunction to restrain any application of the funds of a trade union in contravention of the provisions of this Act, an injunction restraining any application of the funds of a trade union in contravention of the provisions of s. 1 of the Act may be granted at the suit or upon the application of the Attorney-General.

This section introduces an entirely new principle, as a trade union, although it is a legal entity of a quasi-corporate character, yet remains a voluntary association, and as such it is not subject to the intervention of the courts so far as its internal affairs are concerned, owing to the reluctance of the courts to interfere in such matters. It is only where it can be shown by a member of a voluntary association that he has been deprived of his civil rights whether of property or otherwise, e.g. the right to vote, that the courts will interfere.¹ Under this section the Attorney-General is given full rights to apply to the court to restrain any application of the funds of a union, in connection with an illegal strike under s. 1, so that if an injunction be granted the union would be unable to expend their funds on strike benefit or for the purpose of financing the strike in any way whatsoever.

The result is that the Attorney-General will be able to intervene before it has been finally decided whether a strike is or is not of the nature prohibited, and if ultimately on appeal he is proved to be wrong, by that time he might have succeeded in stopping the particular strike.

¹ See *Rigby v. Connol*, *supra*, p. 11.

CHAPTER IV

LEGAL RESPONSIBILITIES OF TRADE UNIONS

Liability for Interference with Labour or Capital

It is perhaps evident that the purposes of a trade union must involve to a greater or less degree some interference with the free disposal of labour and capital, or, as was stated by Sir William Erle,¹ with "the right of every person under the law to full freedom in disposing of his own labour or his own capital according to his own will." It has already been stated² that this interference resulted in the purposes of most trade unions being considered illegal at common law as being in restraint of trade, but in addition, trade unions, by virtue of their combinations, incurred further liabilities by reason of their alleged interference with the free disposal of labour or capital. So that two distinct sources of liability arise, viz. (1) criminal liability and (2) civil liability.

(1) Criminal Liability of Trade Unions

As already stated,³ prior to 1871, the erroneous opinion became prevalent that combinations in restraint of trade were criminal conspiracies at common law, and in a number of cases, decisions were given based on such a view of the common law.⁴ In 1871, however, the Trade Union Act⁵ was passed, s. 2 of which provided that the

¹ See memorandum on "The Right to Free Course for Trade in General" (1869).

² See chap. I., *supra*, p. 10.

³ Chap. I., *supra*, p. 8.

⁴ See *Rex v. Rowlands* (1851) 17 Q.B. 671, *supra*, p. 8.

⁵ 34 & 35 Vict., c. 31.

purposes of a trade union were not, merely because they were in restraint of trade, to be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.¹

Trade unions, therefore, although their purpose might be in restraint of trade, were definitely declared not to be criminal bodies. In 1875 further immunity was granted to trade unions and their members by s. 3 of the Conspiracy and Protection of Property Act,² which provided that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute³ between employers and workmen (or workmen and workmen) is not to be indictable as a conspiracy if such act when committed by one person would not be punishable as a crime.

It is, however, expressly provided by the same section that nothing in the Act is to exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by Act of Parliament, nor is the section to affect any offence against the State or Sovereign.⁴

It follows, therefore, that an agreement between two or more persons to do or procure to be done any act which had for its motive the desire to further the interests of those who were parties to a trade dispute, would entitle those responsible to the protection afforded by the section, if such acts did not involve any of the following offences, viz. a breach of the peace, or a riot, or the forcible overthrow of the Government, or treason, e.g. the dethronement of the King or any of the somewhat uncertain elements of sedition, e.g. causing disaffection between various classes of the community, all of such

¹ See s. 1 of the Trade Disputes and Trade Union Act, 1927.

² 38 & 39 Vict., c. 86.

³ For definition of "trade dispute" see *infra*, p. 79.

⁴ Act of 1875, s. 3; e.g. sedition or treason.

offences being, of course, punishable even though committed by one person only.¹

(2) Civil Liability for Injury Caused by Persons in Combination

Acts done by two or more persons in combination may or may not amount to a conspiracy which consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means.² The existing law as to actionable conspiracy appears to have sprung from the duty and the powers of the courts to protect a man in the lawful exercise of his calling. This protection is necessarily limited, inasmuch as the right of a man to follow his vocation must be co-ordinated with the wide sphere of rights existing in his fellow men. Such co-existing rights do, in a world of competition, necessarily impinge upon one another. To reconcile these two sets of rights has ever proved a task of difficulty. In the great majority of recent cases the molestation of another in his calling has been effected by a combination of persons. The reason for this is obvious. Molestation may yield but slight results unless illegal means, such as defamation or personal assault, be employed, but molestation effected by a combination of many may achieve grave results, even if no specific part of the conduct employed amounts in itself to an actionable wrong.³ While, therefore, a combination merely to interfere in the furtherance of legitimate trade purposes with another in his trade or business which results in injury is not unlawful unless such interference by one person would have been unlawful,⁴

¹ As to the liability of those taking part in illegal strikes, see *infra*, p. 84.

² Per Willes J. in *Mulcahy v. Reg.* (1868) 5 H.L. 306, at 317.

³ Per Lord Lindley in *Quinn v. Leatham* [1901] A.C. 495.

⁴ Per Lord Coleridge in *Mogul v. McGregor* (1888) 2 Q.B.D. 544; per Lord Bowen at p. 549 *ibid.*; *Kearney v. Lloyd* (1890) 26 L.R. 268; *Boots v. Grundy* (1900) 82 L.T. 760.

yet an otherwise lawful act by two or more in combination does become unlawful if done by the two or more in combination with intent to injure another.¹ A man may resist without much difficulty the acts of an individual; he would probably have at least the moral support of his friends and neighbours; but it is a very different thing when one man has to defend himself against many combined to do him wrong. Numbers may annoy and coerce when one may not.² Annoyance and coercion by many may be so intolerable as to become actionable and produce a result which one alone could not produce.³ This view has, however, been criticised in several recent cases,⁴ and the latest tendency of the courts is opposed to such a doctrine. It is now thought, therefore, that it does not necessarily follow that the existence of a combination is essential to the commission of an offence, and there is some authority for the view that what was unlawful in two was not lawful in one, and that the circumstance that two or more persons combined to cause the injury, while it might be very relevant of the purpose and as an aggravation of the damage, is not itself an essential element in the cause of action.⁵ So that a combination of two or more persons which interferes, in order to forward or defend their legitimate trade interests, with another in his trade or labour does not by reason of the combination commit a wrong, and no action will lie although damage to that other person ensues,⁶ unless the interference is accompanied by unlawful acts, e.g. threats of

¹ *Gregory v. Duke of Brunswick* (1843) 6 Man. and G. 208; *Quinn v. Leatham* [1901] A.C. 495; *Sorrell v. Smith* [1925] A.C. 700.

² Per Lord MacNaughten in *Quinn v. Leatham*, *supra*.

³ Per Lord Lindley, *ibid.* at p. 538.

⁴ *Ware and De Freville v. Motor Trades Association* [1921] 2 K.B. 40; *Davies v. Thomas* [1920] 2 Ch. 189; *Hodges v. Webb* [1920] 2 Ch. 20; *White v. Riley* [1921] 1 Ch. 1.

⁵ *Sorrell v. Smith* (*supra*) at p. 713. See also *Ware and De Freville v. Motor Trades Association* [1921] 2 K.B. 40.

⁶ *Mogul v. McGregor* (1888) 2 Q.B.D. 544.

violence or the procurement of a breach of contract.¹ If, however, the combination intended wilfully to injure a person in his trade, such interference would be unlawful, and if it results in damage to him is unlawful even though not accompanied by other unlawful acts. In such a case the agreement to cause injury constitutes the unlawful element.² In such cases of interference, in the absence of the employment of unlawful means which are in themselves unlawful, e.g. threats of violence, procurements of breaches of contract, etc., what constitutes sufficient justification for so interfering with another person in his trade or labour will depend largely upon the facts of the particular case.

To issue black lists which contain no false statement is lawful if they be issued in pursuance of a legitimate trade object³; but to publish lists of a person's customers with the object and effect of injuring that person in his business,⁴ or to publish lists of men on strike in order to prejudice them,⁵ is unlawful. Nor is it sufficient justification if the acts of interference be done by the officials of a union on behalf of the union.⁶

Although it would appear, therefore, that a combination itself is not unlawful, yet as a combination for the purpose of causing injury it may be more effective than unconcerted coercion and in this sense it may be evidence of an unlawful intention, for a combination may make apprehensive or dangerous that which, if it proceeded only from a single individual, would be otherwise, and the very fact of combination may show that the object is simply to do harm and not merely to exercise and

¹ See *South Wales Miners' Federation v. Glamorgan Coal Co.* [1905] A.C. 430; but see also s. 3 of the Trades Disputes Act, 1906.

² *Quinn v. Leatham*, *supra*; *Sorrell v. Smith*, *supra*.

³ *Peto v. Apperley* (1892) 35 Sol. J. 792; *Hails v. Lillingstone* (1891) *ibid.*; *Jenkinson v. Nield* (1892) 8 T.L.R. 540.

⁴ Per Fitzgibbon L.J. in *Quinn v. Leatham*, *supra*.

⁵ *Trotlope v. London Building Trades' Federation* (1895) 72 L.T. 432.

⁶ *Gibben v. National Amalgamated Labourers' Union* [1903] 2 K.B. 600; *Lyons v. Wilkins* [1899] 1 Ch. 255.

protect one's own rights ; a man may resist without much difficulty the wrongful act of an individual, but it is a very different thing when one man has to defend himself against many combined to do him wrong. In such a case, it is not the damage wrongfully done but the conspiracy which is the gist of the action. An apparent conflict is thus presented between two rights that are equally regarded by the law, the right of the employer to be protected in the legitimate exercise of his trade and the right of the employed to dispose of their labour as seems best to them, provided they do no harm to others ; the harmonising of such rights depends upon the particular case and no hard and fast rule can be laid down.

Prohibition of Actions of Tort against Trade Unions

So far as trade unions are concerned, however, they have received a certain amount of protection, by virtue of the provisions of the Trade Disputes Act, 1906, at least in respect of injury caused to others during the course of trade disputes in which they may be concerned. Thus an action against a trade union, whether of workmen or masters,¹ or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union is not to be entertained by any court.² But it is further provided that this immunity is not to affect the liability of the trustees of the union to be sued in the events provided for by s. 9 of the Trade Unions Act, 1871 (i.e. in respect of claims touching or concerning the property of the union), except in respect of any tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute.³ The effect of the above

¹ Or against trading associations for imposing restrictive conditions on the conduct of any trade or business ; see *Hardie and Lane v Chilton* 43 T.L.R.

² Trade Disputes Act, 1906, s. 4 (5).

³ *Ibid.*, s. 4 (2).

section is to protect a trade union from any liability for the tortious acts of its servants or agents, such as interfering with the legal rights of others in furtherance of a strike sanctioned and directed by the authorised officials of the union, and to this extent nullified the decision in the famous Taff Vale Case.¹ The section is not limited to tortious acts committed in contemplation or furtherance of a trade dispute, but extends to all torts, such as libel.² To appreciate the effect of this section, it should be understood what constitutes a tort. The two main classes of civil wrong which give rise to an action at common law for damages sustained by the person suing are (1) breach of a contract and (2) a tort, i.e. a civil wrong, giving rise to an action for damages but which is not a breach of contract, e.g. libel, slander, personal injury caused by negligence, and so on. A trade union therefore enjoys complete immunity in respect of torts committed on its behalf, except in respect of claims against the property of the trade union in the control or possession of its trustees. Thus it is thought that an action for damages would lie against the trustees of a union under s. 9 of the Trade Unions Act, 1871, where the claim is one touching or concerning the property of the union, as for example in an action for damages for a libel published by or on behalf of the union, or for an infringement of an ancient right to light or for nuisance in respect of the union premises or for personal injuries caused by the negligent driving of a union motor-car. Where, however, the act complained of, e.g. the publication of the libel or the driving of the union motor-car, was done in contemplation or furtherance of a trade dispute, the union and their trustees would be protected from liability.³ It should be remembered, however, that while the members and the officials

¹ *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

² *Vacher v. London Society of Compositors* [1913] A.C. 107.

³ s. 4 (a) of the 1906 Act.

of a union cannot be sued so as to make the union liable, they are liable to be sued in tort so as to make themselves personally liable.¹

The legal effect of s. 4 of the 1906 Act is, however, by no means clear. In some quarters the view is held that it places trade unions "above the law" by conferring on them complete immunity in respect of torts committed on their behalf, except in very special circumstances affecting union property, e.g. liability for injuries caused by a union motor-car or for libel contained in a union paper, and that even such restricted liability will be removed if the act causing the injury was done in contemplation or furtherance of a trade dispute. It is thought, however, that the above view is incorrect, and that the section merely prohibits an action in tort being brought against the trade union either in its registered name or in a representative action and that, except in cases arising out of a trade dispute, the funds of a union may be held liable in any action for damages in respect of a tortious act committed on behalf of the union, provided the action be brought against the union trustees in accordance with the provisions of s. 9 of the Trade Union Act, 1871. Thus in *Vacher v. London Society of Compositors*,² Lord Haldane stated that "the Act of 1871 enables trade unions to register and provides by s. 9 that the trustees of a registered trade union may sue or be sued as such in cases concerning the property of the trade union. The Legislature appears to have desired to draw a distinction between the union and its trustees and to preserve the liability of the trustees under this section, even in the case of tortious acts committed by the union, damages arising out of which might, as pointed out by Lord Lindley in the *Taff Vale Case*³ have been made effective against property in the hands of the trustees.

¹ *Bussey v. Amalgamated Society of Railway Servants* [1908] 24 T.L.R. 436.

² (1913) A.C. p. 107.

³ (1901) A.C.

But a restriction is put on the liability of the trustees by exempting from it liability in respect of a tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute."¹

If this be so it would appear that s. 4 of the 1906 Act does not impair the liability imposed on the trustees of a trade union by s. 9 of the Act of 1871,² and that it was the intention of the Legislature to limit the immunity of trade union funds in respect of actions in tort only to cases where the tort was committed by or on behalf of the union in contemplation or furtherance of a trade dispute.³ As s. 9 of the 1871 Act only applies to registered trade unions, it is not clear whether s. 4 (2) of the 1906 Act preserves unimpaired the liability of the trustees of an unregistered trade union in respect of tortious acts committed on behalf of the union, or whether such unregistered union enjoys complete immunity from actions in tort.

It is now provided by s. 1 (3) of the Trade Disputes and Trade Union Act, 1927, that the provisions of the Trade Disputes Act, 1906, so far as they apply to trade disputes, is not to apply in the case of illegal strikes,⁴ thus, in effect, restoring the liability of the union funds (as imposed by the courts in the Taff Vale Case) to pay damages for loss caused by the tortious acts of the union through its servants or agents, such as interference with the legal rights of employers and others, by reason of such strike action.

¹ Vacher's Case, p. 115.

² Per Lord Moulton at p. 131.

³ As to what strikes are illegal, see p. 79, *infra*.

⁴ Per Lord Atkinson at p. 125.

CHAPTER V

THE RIGHT TO STRIKE

The Legality of Strikes

THE combined effect of s. 3 of the 1875 Act and s. 1 of the 1906 Act was to provide complete statutory immunity from both civil and criminal liability so far as strike action is concerned. But it must not be considered that strikes are illegal at common law. In spite of occasional legal dicta to that effect, such a view has never received support in English courts of law. Prior to 1825 the courts did not treat combinations to better the conditions of labour as being contrary to common law, and Statutes passed from time to time with the view of controlling such combinations do not purport to rest on the common law. It was not until after the bulk of the early Statutes had been repealed by the Combination Act, 1825, that the erroneous idea began to be prevalent that trade unions were unlawful associations at common law. Even so, the weight of judicial authority is opposed to such a view. Lord Justice Fletcher Moulton has stated that strikes *per se* are combinations neither for accomplishing an unlawful end nor for accomplishing a lawful end by unlawful means.¹

“ General Strike ”

Much controversy has recently raged in legal circles over the question as to whether the so-called “ general strike,” as exemplified by that of 1926, is illegal at common

¹ *Gosney v. Bristol Trade Society* [1909] 1 K.B. 901 at p. 923.

law. There would appear to be little authority either way. Undoubtedly if a general strike were directed against the Government or were dangerous to the public security, e.g. by creating disaffection in the minds of the people or by stirring up hatred and contempt of the Government and Constitution, those responsible would be liable to be convicted for seditious conspiracy. On the other hand, authority does exist for the view that a general strike for lawful political purposes—that is, purposes which are not treasonable or seditious, etc.—is not illegal at common law, although such a strike might not be a trade dispute within the meaning of the Trade Disputes Act, 1906. In *Rex v. Cooper* (1843) 4 State Trials N.S. at p. 1250, the view was expressed by Mr. Justice Erskine “That honestly and peaceably to persuade the working classes to cease their work for the purpose of obtaining the Charter is not in itself criminal.” It is also of interest to note that s. 1 of the Emergency Powers Act, 1920, provides that if it appears that any action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be calculated to interfere with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, or to deprive the community or any substantial part thereof of the essentials of life, a state of emergency may be proclaimed. Emergency regulations may then be issued, but such regulations must not make it an offence for any person or persons to take part in a strike or peaceably to persuade any other person or persons to take part in a strike. Such legislation would appear to have anticipated sympathetic strike action on the scale of that in 1926, and it is interesting to observe that regulations issued by the Government under that Statute embodied the above provisions, expressly preserving the right to strike in such circumstances. It would appear, therefore, that prior to 1926 the balance of

authority, meagre as it was, tended towards the view that a strike extending to one or more or all industries is not illegal at common law provided that its purpose is not seditious or otherwise unlawful, and that it is not accompanied by any acts which are *per se* illegal, e.g. violence or intimidation, or breaches of contract. In *National Sailors' and Firemen's Union v. Reed*,¹ however, the view was expressed by Mr. Justice Astbury (by way of *obiter dictum*²) that the "general strike" of 1926, in which the workmen ceased work in breach of their contracts of employment, in support of the miners was outside the scope of the Trade Disputes Act, 1906, and therefore illegal at common law. Having regard to such breaches of contract, this view of the common law was probably right, but the question then arises as to the position, if such breaches were procured for the purposes of a trade dispute. It would appear that the learned judge held the view that no trade dispute had been alleged or shown to exist in any of the unions affected, except in the miners' case. But it is thought that the proper construction of the 1906 Act supports the view that a person's act may be done in pursuance of a trade dispute within the protection of the Act, in spite of the fact that there may be no trade dispute between him and anyone else. (See Lord Loreburn in *Conway v. Wade*.) So that so far as the sympathetic strike is concerned, whether it extend to one or more or all industries, it may well be in furtherance of a trade dispute within the meaning of the Trade Disputes Act, 1906, and therefore lawful even though breaches of contract are involved,³

¹[1926] 1 Ch. 536.

²*Obiter dictum*, i.e. a thing said by the way. *Obiter dicta* are such statements of law made by the judges as are not necessarily called for by the case before them. These *dicta* have no binding force, though they have an authority which is entitled to respect (Geldart, *Elements of English Law*, p. 19).

³[1909] A.C. 506 at p. 512.

⁴See p. 96, *infra*.

provided its object is reasonably calculated to assist the parties to a trade dispute.

Illegal Strikes

Such was the position following upon the "general strike" of 1926. The law as to strike action has, however, been considerably modified by the Trade Disputes and Trade Unions Act, 1927. Ostensibly passed in consequence of the national stoppage which took place in 1926, s. 1 of this Act provides that any "strike having any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged is to be unlawful, if it is designed or calculated to coerce the Government, either directly or by inflicting hardship upon the community."

"Strike"

This term is defined in s. 8 (2) as "the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been, employed, to continue to work or to accept employment."

"Trade Dispute"

The Act defines¹ that a trade dispute is "not to be deemed to be within a trade or industry, unless it is a dispute between employers and workmen or between workmen and workmen in that trade or industry which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of persons in that trade or industry." It follows, therefore, that, even though the strike be confined to those engaged in a particular industry (sometimes called

¹s. 1 (1) (a).

a primary strike), yet if the object of the cessation of work be other than simply a dispute with the employers over conditions of work, such cessation of work will now be unlawful.

"Trade or Industry"

These words are defined in the Act¹ to mean "without prejudice to the generality of the expression 'trade or industry,' workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusion of the same joint industrial council, conciliation board, or other similar body, or in accordance with the agreements made with the same employer or group of employers."

Thus the members of the National Union of Railwaymen, the Amalgamated Society of Locomotive Engineers, and the Railway Clerks' Association, whose wages and conditions of employment are determined by the Central and National Wages Boards established under the Railways Act of 1921, would be regarded as being within the same trade or industry for the purposes of the Act, and sympathetic strike action could be taken by these unions to help one another, when they are involved in trade disputes with the railway companies. It would probably, however, not cover the case of sympathetic strike action by those members of the Transport Workers' Federation who are employed by the London General Omnibus Company if they were to strike in sympathy with their fellow-members² who are employed by the London County Council Tramways, as the wages and conditions of employment of the two categories of men are not settled by "the same joint industrial council, conciliation board,

¹ s. 1 (1) (b).

² The fact that the strikers are members of the same union will afford no excuse in law, if the strike is otherwise illegal.

or other similar body, or in accordance with the agreements made with the same employer or group of employers." In cases which are not, however, within the above definition, the determination of what is a "trade or industry" will be a question of fact which can only be determined by a court of law as to what are the boundaries of a trade or industry. Consequently, in such cases sympathetic strike action will only be possible in circumstances of doubt and uncertainty as to the legality thereof.

"Designed or Calculated to Coerce the Government"

A strike is to be illegal if it is "designed" (i.e. intended) or "calculated to coerce the Government"—i.e. if such coercion ought reasonably to be expected as a consequence thereof.¹ So that if coercion results, the strike will be illegal even though those responsible for the strike did not desire or intend to coerce the Government, if the courts hold that such coercion was reasonably to be expected to be the result of such strike action.

"Hardship upon the Community"

There is no definition of what constitutes "hardship upon the community," and there is great probability that the courts might say that all strike action which involves interference with essential services, e.g. fuel, light, transport, food, etc., is by its very nature calculated to "inflict hardship upon the community," so that all effective sympathetic strikes, in furtherance of trade disputes outside the trade or industry in which the sympathetic strike takes place, will apparently be illegal.

The general effect of s. 1, as regards all forms of strike action, would appear to be as follows :

¹ Trade Disputes and Trades Union Act, 1927, s. 8 (a) (c).

Primary Strikes

Any primary strike the object of which is restricted to furthering a trade dispute¹ within the trade or industry in which the strikers are engaged will be lawful, even though it be designed or calculated to coerce the Government by inflicting hardship upon the community. If, however, the primary strike has (a) any object in addition to the furtherance of a trade dispute, or (b) for its direct object an object other than the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, it will be unlawful. Thus it will still be lawful for the miners to strike in respect of disputes with the coalowners over wages, hours, or other conditions of employment in the coal industry, however much hardship may be inflicted on the community; but if they so strike with any other object in addition, e.g. to secure a statutory minimum wage or to compel the Government to repeal the Eight Hours Act of 1926, or if the sole object of the strike is to bring about one of the above results, then any such primary strike will be illegal under the Act, on the ground that it is designed or calculated to coerce the Government.

Sympathetic Strikes

Sympathetic strikes, whether on a national or local scale, and whether in breach of contract or otherwise, are to be illegal, if they are calculated to coerce the Government or to inflict hardship upon the community. If, however, the object of the sympathetic strike is restricted to assisting in a trade dispute the parties to which are employed in the same trade or industry as that to which those who take part in the sympathetic strike belong it will be lawful, e.g. the members of the Railway Clerks' Association could strike in support of the National Union

¹ As to what constitutes a trade dispute, see p. 79, *supra*.

of Railwaymen, but not in support of the Miners' Federation, and they would presumably have this right even though the sympathetic strike was calculated to coerce the Government or to inflict hardship on the community. If, however, the sympathetic strike can be shown to be a strike not designed or calculated to coerce the Government either directly or by inflicting hardship upon the community, apparently it will be lawful in any event.

Financial Assistance

It is also illegal to apply any sums in furtherance of, or support of, an illegal strike, so that the expenditure of union funds for strike purposes, e.g. strike pay, or the provision of financial assistance to the strikers, whether by way of relief funds or otherwise, is prohibited.⁴

Lock-outs

The Act also provides⁵ that a lock-out is to be illegal if it has any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the employers locking out are engaged, if it be a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community:

The term "lock-out" is defined as the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him, in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment.⁶

⁴ s. 1 (1) of the 1927 Act.

⁵ s. 1 (2), *ibid.*

⁶ s. 6 (2) (b), *ibid.*

Penalties Arising out of Illegal Strikes

Any person who declares, instigates, incites others to take part in, or otherwise acts in furtherance of a strike declared by the Act to be illegal, is liable to a criminal prosecution involving a maximum fine of £10 or to imprisonment for a term not exceeding three months, or, on conviction on indictment, for a term not exceeding two years.¹ No person is, however, to be so liable by reason only of his having ceased work or having refused to continue to work or to accept employment. Moreover, where any person is charged before a court with an offence under the section, no further proceedings in respect thereof may be taken against him without the consent of the Attorney-General; this provision is not, however, to affect the power of the court to remand such person (whether in custody or on bail) or otherwise in order to secure his safe custody.² This provision imposes liability not only on union officials, but on all persons in any way assisting those on strike, whether by speeches, writings, money, or otherwise, and might impose liability on persons raising funds for relieving the dependants of those engaged in an illegal strike. Nor would the rank and file workmen engaged in an illegal strike in all cases be exempt from liability. It is true that merely ceasing to work or refusing to work is not to constitute an offence; but liability will be incurred by any other act, e.g. taking part in a strike ballot, acting as a strike picket, distributing strike literature, and so on, in connection with an illegal strike.

It will also be remembered that in addition to the criminal liabilities, the Attorney-General may, in cases of strike action declared to be illegal under s. 1 of the 1927 Act, apply to the courts for an injunction restraining any

¹ s. 1 (2), of the 1927 Act.

² s. 1 (3) *ibid.* The provision does not apply to prosecution instituted by the Director of Public Prosecutions or to Scotland.

application of the funds of the unions concerned in the strike. The effect of the injunction, if granted, would be to prevent any part of the union funds from being used for strike benefit or any other purpose connected with the strike.¹

S. 1 (3) provides that the Trade Disputes Act, 1906, and the Emergency Powers Act, 1920, so far as they apply to trade disputes, shall not apply to the case of such illegal strikes (or lock-outs), thus in effect restoring the liability of the union funds to pay damages for injury or loss suffered by employers and others, as a result of strike action which was imposed by the courts in the Taff Vale Case.²

S. 1 (3) further provides that the second proviso to s. 2 (1) of the Emergency Powers Act, 1920, which prohibits the making of regulations during a state of emergency, rendering it an offence for any person to take part in a strike or peacefully to persuade any other person to take part in a strike, is not to apply to the case of such illegal strikes (or lock-outs). No person is, however, by reason only of his having ceased work, or having refused to continue to work or to accept employment, to be deemed to have committed an offence under any such regulations issued under the 1920 Act. In effect, the protection afforded by the 1920 Act to those who peacefully persuade other persons to take part in a strike during a state of emergency is removed in cases where such a strike is illegal under s. 1 of the 1927 Act. In other words, picketing in such circumstances will be illegal.

Peaceful Picketing

The Combination of Workmen Act, 1825, as already stated,³ created new offences of molestation and obstruction, but in 1859 peaceful picketing was made lawful by

¹ *Supra*, p. 66.

² *Supra*, p. 73.

³ See chap. i., p. 8, *supra*.

the Molestation of Workmen Act. In 1871, however, peaceful picketing was again made illegal by the passing of the Criminal Law Amendment Act, 1871. In 1875 this was qualified by the Conspiracy and Protection of Property Act, which legalised picketing for the purpose of communicating information but not for the purpose of peaceful persuasion. The position thus created was so unsatisfactory as to justify a further change in the law. As was stated by Sir John Walton, the Attorney-General, when introducing the Trade Disputes Act, 1906,¹ "The right of peaceful persuasion is an essential part of the right to strike. The law at present is in an absurd position. It is held to be perfectly lawful to point out to the men what are the points in difference. You may either ask for information with regard to the strike, or you may give them information with regard to the reason of the conflict between the workmen and employer. But if you go one step further and so present the information you give them as to make your appeal in the nature of persuasion, you are then violating the law."²

It was, therefore, to remedy this position that s. 2 of the Trade Disputes Act, 1906, was passed. By this section it was provided that it is to be lawful for one or more persons,³ acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

It should be observed, however, that the immunity under the above provisions must be strictly limited to

¹ 6 Edw. VII, c. 47.

² Speaking in the House of Commons.

³ The section is not confined to members of a trade union. (See per Lord Haldane in *Vacher v. London Society of Compositors* [1913] A.C. 107 at p. 111.)

peaceful picketing, but there is no legal restriction on the number of those who may picket. Watching and besetting, intimidation, assault, threats of violence, or other improper acts are still unlawful, and render any persons responsible for such acts liable to prosecution. The object of the section was not intended to enlarge the sphere of operations of trade union representatives and others. It was never intended to authorise as a matter of right an invasion into a man's house or entry against the will of the owner.¹ Moreover, the peaceful picketing must be carried out so as not to cause an obstruction of the highway,² but stationary pickets who cause no violence, obstruction, or nuisance and do nothing beyond communicating information cannot be held legally liable.³

The right of picketing enjoyed by those engaged in trade disputes, by virtue of the above provisions of the Trade Disputes Act, 1906, has been, however, considerably modified by s. 3 of the Trade Union and Trade Disputes Act, 1927, which provides that picketing is to be unlawful if the pickets attend in such numbers or such manner as to be calculated to intimidate any person at the house or place where such person resides or works or carries on business or happens to be, or to obstruct the approach thereto or egress therefrom or to lead to a breach of the peace. It should be noted that the above section applies to all forms of strike action, whether legal or illegal.

"Intimidation"

In this connection "intimidation" is defined to mean to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his

¹ *Larkin v. Belfast Harbour Commissioners* [1908] 2 I.R. 214.

² So decided in the London police courts.

³ *Ward, Lock & Co. Ltd. v. Operative Printers' Assistants* (1906) 22 T.L.R. 327.

family or to any of his dependants, or of violence or damage to any person or property and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong. The expression "any actionable wrong" would include the wrong of defamation, e.g. libel or slander. So that to call a man a "blackleg" or "scab" or other opprobrious term would probably be held to intimidate him, as such terms would give the person so called a right of action for slander. The above definition is not altogether satisfactory, owing to its uncertainty. Consequently the border line between what is permissible and what is prohibited is so vague as to render almost all forms of picketing liable to be declared illegal on the grounds of alleged intimidation.

"Obstruction"

The second exception which excludes lawful picketing is to "obstruct the approach to a house." This is irrespective of whether there is intimidation or not. The most orderly collection of people here become illegal if there be obstruction.

Obstruction will be a question of fact to be decided upon the facts of the particular case. But it has previously been held by the courts that there may be obstruction, although there be space free for ordinary traffic, if the highway be rendered less commodious.

"Breach of the Peace"

The words "calculated to lead to a breach of the peace" do not alter the present law unless there be danger in the word "calculated" which introduced an element of uncertainty.

Watching and Besetting

A further provision dealing with peaceful picketing is contained in s. 3 (4) of the 1927 Act, thus it is unlawful for one or more persons for the purpose of inducing any person to work or abstain from working to "watch or beset" a house where a person resides or the approach to such a house or place. The meaning of this provision is not clear, but it is thought that it does not prohibit the "mere attending" at a house for the purposes of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working, as authorised by the Trade Disputes Act, 1906.¹

Unlawful Interference

S. 7 of the 1875 Act provides that :

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully, and without legal authority :

(1) Uses violence to or intimidates such other person or his wife and children, or injures property ; or

(2) Persistently follows such person about from place to place ; or

(3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or

(4) Watches or besets the house or other place where such other person resides or works, or carries on business or "happens" to be or the approach to such house or place ; or

(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

¹ See *Rex v. Wall* (1920) 21 Cox C.C., p. 401 ; also s. 2 of the Trade Disputes Act, 1906.

shall be liable either to pay a penalty not exceeding £20¹ or to three months' imprisonment with or without hard labour.

The above section, which imposes liabilities in substitution for and not in addition to any which may have existed under the common law, should be read as if s. 2² of the Trade Disputes Act, 1906, were embodied in it. Both sections deal with what may be lawfully done without but not within a house or other place. It was not intended to enlarge the field of operations—the physical area of the operations of representatives of trade unions or of others,³ and the right of "attending at" a house does not include the right of "watching" a house. The Trade Disputes Act, 1906, only authorises a "mere attending" which is more temporary than "watching."⁴

So that apart from s. 2 of the Trade Disputes Act, 1906, the criminal liability of trade unions with regard to picketing is governed by the provisions of s. 7 of the 1875 Act, together with s. 3 of the 1927 Act.

"With a View to Compel"

Besetting a workman to compel a master and besetting a master to compel a workman are both within the mischief aimed at by the section,⁵ but the compulsion must be done wrongfully and without legal authority.⁶ The act of compulsion is not wrong in itself,⁷ so that merely to issue bills urging workmen not to work during a strike is not an act with a view to compel another to abstain

¹ In certain circumstances, this may be reduced to a fine of £5, see s. 8 of the 1875 Act.

² See p. 86, *supra*.

³ Per Lord O'Brien in *Larkin v. Belfast Harbour Commissioners* [1908] 2 I.R. 214 at p. 221.

⁴ Per Palles J. in *Rex v. Wall* (1910) 21 Cox C.C. 401 at p. 403.

⁵ *Lyons v. Wilkins* [1899] 1 Ch. 255 at p. 273.

⁶ *Ibid.*, p. 271.

⁷ *Ward, Lock & Co. Ltd. v. Operative Printers' Society* (1906) 22 T.L.R. 327.

from doing a legal act,¹ nor is the issuing of a bill urging union members to boycott a particular individual a wrongful act of compulsion.² But to issue a general "black list" of non-union men may be wrongful compulsion,³ unless it can be shown that such lists are accurate and were published with the *bona fide* object of furthering or protecting the legitimate trade interests of the union.⁴ It is not, however, a breach of the above section to deprive a person of or hinder him in the use of his tools for the purpose therein mentioned, if such deprivation or hindrance is effected without violence or threats of violence.⁵

What Constitutes "Intimidation"

The word "intimidation" is not a term of art but a word of common speech and everyday use, and must receive a reasonable and sensible interpretation according to the circumstances of the cases as they arise from time to time. Prior to the 1927 Act⁶ the test applied was whether the intimidation complained of would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated, in other words, to such intimidation as implies a threat of personal violence.⁷ The intimidation complained of need not result in such compulsion as would induce serious apprehension of violence in a man of ordinary courage, if the intimidation is such as would justify a binding over of the intimidator to keep the peace.⁸ But to tell an employer that if he employs workmen of a certain sort the workmen of another

¹ *Peto v. Apperley* (1890) 35 Sol. J. 792.

² *Haile v. Lillingstone* (1890) 55 J.P. 676.

³ *Trollope v. London Building Trades Federation* (1895) 72 L.T. 342.

⁴ *Ware and de Freville v. Motor Trades Association* (1921) 37 T.L.R.

213.

⁵ *Fowler v. Kibble* [1922] 1 Ch. 140.

⁶ See p. 87, *supra*.

⁷ *Gibson v. Lawson* [1891] 2 Q.B. 357 at p. 359.

⁸ *Agnou v. Munro* (1891) 18 R. (J.C.) 22.

sort will be told to leave him, and to tell the men, when the employer will not give way, "to leave their work, use no violence, use no immoderate language, but quietly cease to work and go home" is not intimidation within any reasonable construction of the 1875 Act.¹

The sending of a letter to an employer notifying him that no member of the union would be allowed to work for him until he reduced the number of his apprentices does not constitute the offence of intimidation.

The above decisions as to what constitute "intimidation" have now been considerably extended by the definition of intimidation contained in s. 3 of the 1927 Act (*supra*).

What Constitutes "Persistently Following"

The gist of the offence of "persistently following" a person is not the following in a disorderly manner, but in doing so with a view to compel such person to abstain from doing some act which he had a legal right to do.²

How far an offence is committed by the forming of a procession of trade unionists, which precedes a person in order to exercise pressure upon him, is a doubtful question yet to be decided by the courts.

"Watching and Besetting"

Prior to the passing of the Trade Disputes Act, 1906,³ which legalised peaceful picketing, a wide interpretation was placed upon the words "watching and besetting" in the 1875 Statute. Even in the absence of violence or threats of violence, anything in the nature of peaceful persuasion was brought within the ambit of the section. Thus it was held that the picketing of the works or place

¹ *Curran v. Treleavan* [1891] 2 Q.B. 560 at p. 562.

² *The Queen v. MacKenzie* [1892] 2 Q.B. 519 at p. 522.

³ p. 86, *supra*.

of business of an employer, for the purpose of persuading people not to work for him, was a "watching or besetting" with a view wrongfully and illegally to compel persons to abstain from doing a lawful act within the meaning of s. 7 of the 1875 Act.¹ And the court granted an interlocutory injunction to restrain the union and its agents from watching and besetting the plaintiff's works for the purpose of persuading or otherwise preventing persons from working for him, or for any purpose except merely to obtain or communicate information.

Besetting a person on a ship is within the section.²

The above decisions are, of course, only of historic interest by reason of the provisions of s. 2 (1) of the Trade Disputes Act, 1906 (*supra*, p. 86), but where the acts complained of do not constitute peaceful picketing within the 1906 Act, or where the act was not done in contemplation or furtherance of a trade dispute, the provisions of s. 7 of the 1875 Act, as applied by the courts in the above cited cases,³ would still apply.

Prohibited Breaches of Contract concerning Gas, Water, and Electricity Supply, or involving Injury to Persons or Property

Any person employed by a municipal authority or other body having a statutory duty of supplying any place with gas, water, and electricity who wilfully and maliciously breaks a contract of service with that body, knowing or having reasonable cause to know that the probable consequences of his so doing will be to deprive the inhabitants of that place of their supply of gas, water, or electricity, is liable on summary conviction or on indictment either to pay a penalty not exceeding £20 or

¹ *Lyons v. Wilkins* (No. 1) [1896] 1 Ch. 811; see also *Charnock v. Court* [1899] 1 Ch. 35; *Quinn v. Leathem* [1901] A.C. 495 at p. 501.

² *Farmer v. Wilson* (1900) 69 L.J., Q.R. 496.

³ *Lyons v. Wilkins*, etc., *supra*.

to be imprisoned for a term not exceeding three months with or without hard labour.¹

Copies of the above section must be posted in a conspicuous position in the works of the municipality or other body, and in default thereof fines may be imposed on summary conviction.²

Any person who wilfully and maliciously breaks a contract of employment, knowing or having reasonable cause to believe that the probable consequence of his so doing, will be to endanger human life, or cause serious bodily injury, or to expose valuable property to destruction or serious injury, is liable to be fined £20 or be imprisoned for a term not exceeding three months, with or without hard labour.³

To justify a conviction the action must be done "wilfully and maliciously"; that is, purposely or at least recklessly⁴; and it is no defence to show that the act was not directed against the owner.⁵ On the other hand, mere negligence or mischance would not amount to a wilful and malicious act (3 Co. Inst. 67).

Prohibited Breaches of Contract while in the Employment of Local or Public Authorities

S. 6 (4) of the Trade Union and Trade Disputes Act, 1927, extends s. 5 of the Conspiracy and Protection of Property Act, 1875, which declares that a breach of contract involving injury to persons or property is to be a criminal offence, to the case of any person employed by a local or public authority who similarly breaks his contract of service and hiring so as to cause injury or danger

¹ s. 4 of the 1875 Act together with s. 31 of the Electricity (Supply) Act, 1919.

² s. 4 of the 1875 Act; but see s. 3 (4) of the 1927 Act.

³ s. 5 of 1875 Act.

⁴ *Rex v. Pemberton* (1874) L.R. 2 C.C.R. 119; *Rex v. Latimer* (1886) 17 Q.B.D. 359.

⁵ s. 15 of the 1875 Act.

or grave inconvenience to the community, and this criminal liability will accrue whether the workmen so employed have broken their contracts for the purposes of a trade dispute (i.e. a dispute with their employers over their wages or other conditions of employment) or otherwise. In addition, the workmen continue to be civilly liable to pay damages to their employers in respect of such breaches of contract. Such provisions would not prevent, for example, tramway employees of a local authority from striking for the purpose of a trade dispute so long as they lawfully terminate their contracts of employment by due notice and do not strike in breach of contract.

It will be observed that the word "maliciously," which is contained in s. 4 of the 1875 Act, is omitted from s. 6 (4) of the 1927 Act. It is thought, however, that its omission does not extend the scope of the provision. The term "maliciously" has previously been held to denote an act done, "purposely or at least recklessly,"¹ but any such act would probably be covered by the term "wilfully," which is still retained in s. 6 (4) of the 1927 Act, and the use of the term "maliciously" would therefore appear to have been superfluous as used in s. 4 of the 1875 Act.

Application to Seamen

Nothing in the 1875 Act is to apply to seamen or sea apprentices.² Seamen as defined by the Merchant Shipping Act, 1894,³ includes every person (except masters and pilots) employed or engaged in any capacity on board any ship. It has been held that the effect of s. 16 is to prevent seamen being prosecuted for offences under the Act,⁴ as similar offences by seamen are punishable under

¹ *Rea v. Latimer* (1886) 17 Q.B.D. 359.

² s. 16 of the 1875 Act. ³ See s. 742 thereof.

⁴ *Rea v. Wall* (1890) 22 C.C.C. Sess. Papers 880.

the Merchant Shipping Act, 1894.¹ But apparently it does not prevent them from bringing an action under the 1875 Act.²

Apprentices

An employer who, being legally liable to provide his employee (i.e. servant or apprentice) with necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is likely to be seriously or permanently injured, is liable to a fine not exceeding £20 or three months' imprisonment, with or without hard labour.³

This section is still of practical importance in the case of those employees who live on the premises of their employers, such as domestic servants, shop assistants, and farm labourers.

Civil Liability for Individual Interference

Where a trade dispute is in contemplation or furtherance, an act done by a person is not actionable on the ground only

- (a) That it induces some other person to break a contract of employment ; or
- (b) That it is an interference with the trade, business, or employment of some other person ; or
- (c) An interference with the right of some other person to dispose of his capital or his labour as he will.⁴

Unlawful Interference at Common Law

The immunity which this section is supposed to confer on those who become parties to a trade dispute is not

¹ See s. 236.

² *Kennedy v. Cowie* [1891] 1 Q.B. 771.

³ s. 4 of the Conspiracy and Protection of Property Act, 1875.

⁴ s. 3 of the Trade Disputes Act, 1906.

quite so extensive as one would at first glance imagine. So far as the procurement of a breach of contract is concerned, it has always been held at common law to be an actionable wrong to procure a breach of contract provided actual pecuniary damage is sustained by the person whose contract is so broken,¹ even though there is an absence of spite and ill-will.² It has, however, always been possible to plead justification for the procurement of a breach of contract, although considerable difficulty may arise in particular cases in determining what is a "justification." An exhaustive definition cannot be given, regard must be had to the circumstances of each case as it arises.³ But a father may interfere to prevent his daughter from marrying a man of criminal character,⁴ and a person who holds a prior contract with another person, inconsistent with a contract made between that other person and a third, is justified in inducing a breach of the latter contract,⁵ so that a union official apparently is entitled to persuade one of his union members, who has subsequently joined another union, to break his contract with the latter union and remain a member of his old union.

But a person cannot justify the breach of a contract, which he has procured on the ground that he acted on a wrong understanding of his own rights, or without malice, or *bona fide*, or in his own interests, or as an altruist.⁶

¹ *Lumley v. Gye* (1853) 2 E. & B. 216 per Erie J. at p. 232; *Allen v. Flood* [1898] A.C. 1; *Read v. Friendly Society of Operative Stonemasons* [1902] 2 K.B. 732.

² *South Wales Miners' Federation v. Glamorgan Coal Co.* [1905] A.C. 239.

³ Per Vaughan Williams L.J. in *Gibben v. National Amalgamated Labourers' Union* [1903] 2 K.B. 600 at p. 618.

⁴ *Pratt v. British Medical Association* [1918] 1 K.B. 244 at p. 265.

⁵ *Smethies v. National Association of Operative Plasterers* [1909] 1 K.B. 320, 337.

⁶ *Read v. Friendly Society of Operative Stonemasons* [1902] 2 K.B. 88, 96, 97.

With regard to an act which constitutes an interference (a) with the trade or business of another person, or (b) with his right to dispose of his capital as he wills, such interference is not in itself illegal. A man's right or freedom to carry on his trade is not of a higher kind than any other common right.¹ But where such interference is accompanied by the use of illegal means, such as violence, threats of violence, or fraud, then, in the absence of justification, such interference will be unlawful.²

Moreover, illegal means would include moral intimidation by the exercise of the pressure of numbers, as where a person controlling the conduct of many, in order indirectly to intimidate A, prevents them from working for B, thereby exercising pressure upon A,³ or the publishing of a "black list" containing the names of recalcitrant men, thus preventing them from being employed,⁴ or where the act complained of was wilfully and knowingly done, or was done for the purpose of injuring another, or his trade or business,⁵ would require justification.

What constitutes sufficient justification is a question of degree, and must be decided in each case as it arises.⁶ It is for the court to determine on which side of the line the case falls.⁷

The protection of one's own legitimate trade or union interests may be a justification,⁸ but not if the object of the interference is to compel the payment of a union fine, unless there be sufficient cause or excuse.⁹

¹ See *Hodges v. Webb* [1920] 2 Ch. 70.

² *Tarleton v. M'Gawley* (1799) 1 Peake N.P., p. 270.

³ *Quinn v. Leatham* [1901] A.C. 498.

⁴ *Trollope v. London Building Trades Federation* (1895) 72 L.T. 342.

⁵ *Sorvell v. Smith* [1925] A.C. 700, at p. 714.

⁶ Per Vaughan Williams in *Giblan's Case supra*.

⁷ Per Bowen L.J. in *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889) 23 Q.B.D. 596 at p. 618.

⁸ *Giblan v. National Labourers' Union* [1903] 2 K.B. 600.

⁹ *Hutley v. Simmons* [1898] Q.B. 181.

Lawful Interference at Common Law

On the other hand, where there is no interference with a contract or other legal right, and no illegal means are employed, the question of justification does not arise. However much the person responsible for the act of interference may have desired or intended to harm or injure the person complaining, and whatever may have been his loss and suffering, so long as the act complained of was not done for the sole object or purpose of causing such injury, no action will lie.¹ It does not matter what the particular act interfered with is, so long as it is not one which the person doing it has a definite legal right, by contract or by common law or statute law, to do,² and a notification that there will be a strike unless certain things happen is lawful in this sense.³

If this be so, it would appear that the protection afforded trade unions by s. 3 of the Trade Disputes Act, 1906, in respect of acts involving an interference (a) with the business, trade, or employment of a person, or (b) with the right of a person to dispose of his capital or labour as he will, is superfluous and unnecessary, because, as has just been stated, in the absence of the employment of any illegal means, such as violence or an intention to injure, such interference does not give rise to any right of action even at common law. It would appear, therefore, that the only protection afforded by the section is in respect of the procurement of a breach of contract in contemplation in furtherance of a trade dispute, which apart therefrom would render the person responsible liable to an action for damages.

¹ *Allen v. Flood* [1898] A.C. 1.

² Per Wills J. in *Allen v. Flood* at p. 52.

³ *White v. Riley* [1921] 1 Ch. 1.

"In Contemplation or Furtherance of a Trade Dispute"

The question has recently arisen as to the exact scope of the term "in contemplation or furtherance of a trade dispute."

It has been stated that the words "in contemplation or furtherance of" must embrace an act done by a person with a view to bringing about a trade dispute.¹ But they do not cover the case of coercive interference in which the interferer may have in his own mind that if he does not get his own way he will take steps to bring a trade dispute into existence.² They do, however, cover the case where either a dispute is imminent, and the act is done in expectation and with a view to it, or the dispute is already existing and the act is done in support of one side to it.³

But, even if the acts are done in furtherance of a trade dispute, if they are done in furtherance of a dispute to which the Act does not apply—e.g. a strike for political purposes—they may stand outside the protection of the Act.⁴

The words "in furtherance" would, however, appear to permit help, assistance, and encouragement to be given to one or more of the parties to a trade dispute, even though it involved a breach of contract.⁵ In other words, it protects strike action even when such action involves the procurement of a breach of contract, so long as it is not otherwise unlawful.

This would appear to be so, however extensive the scale of the sympathetic strike, provided that, if the strike involves a breach of contract, those responsible for procuring such breaches of contract would have the onus of proving that what they had done was in furtherance of

¹ Per Cozens Hardy in *Conway v. Wade* [1908] 2 K.B. 844 at p. 849.

² Per Lord Shaw in *Conway v. Wade* [1909] A.C. 506 at p. 522.

³ Per Lord Loreburn, *ibid.*, p. 512.

⁴ Per Lord Sumner in *Larkin v. Long* [1915] A.C. 814 at p. 837.

⁵ s. 3 of the 1906 Act.

the original trade dispute. It is thus a question of fact, to be decided by the jury, and the test to be applied would be objective and not subjective; that is to say, it would not be sufficient for a trade union official to say that he procured the breach because he thought or believed it would further the interests of one of the parties to a trade dispute. He would have to go further, and prove that in fact it did, or at any rate was reasonably probable that it would, so further the interests of one of the parties thereto when he procured the breach. Applying the above principles to the "general strike" of 1926, no definitive opinion can be offered as to whether or not (apart from the constitutional issue)¹ those responsible for calling the said strike were entitled to the protection of s. 3 of the 1906 Act. It would be a question of fact in each case, such question to be determined by the jury.

Having considered what may be done "in contemplation or furtherance" of a trade dispute, it is perhaps desirable to ascertain what constitutes a "trade dispute."

"Trade Dispute"

The expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the term of the employment, or with the conditions of labour, of any person.²

For the purposes of the above section the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises.³

A trade dispute, therefore, is not to be restricted to a

¹ As to whether a general strike is illegal, and the general law with regard thereto, see p. 76, *supra*.

² s. 3 (3) of the 1906 Act; and see *Dallimore v. Williams* (1912) 29 T.L.R. 67; see also p. 79, *supra*.

³ s. 3 (3) of the 1906 Act; but see s. 1 of the 1927 Act.

dispute affecting the workmen of a particular employer ; it may affect all persons employed in trade or industry. It is this provision which protects the trade union official or other individual from any liability for procuring a breach of contract of employment, providing the act of procurement was done in contemplation or furtherance of the original dispute, which, as has previously been pointed out, is a question of fact to be determined by the jury.

A trade dispute must be something fairly definite and of real substance ; a mere personal quarrel, or a grumbling, or an agitation, is insufficient.¹ In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other,² but it does not necessarily include every case of personal difference between any one workman and one or more of his fellows. It is true that, after a certain stage, even such a dispute, although originally due to personal animosity, may come to be a subject upon which sides are taken, and may develop into a trade dispute ; but until it reaches that stage a trade dispute does not necessarily exist.³

Nor will a dispute, not in its origin a trade dispute, become a trade dispute merely because the officials of a workmen's union choose to assist one side or the other, although circumstances might arise where it might.⁴ Whether a trade dispute was actual, impending, or probable is a question of fact in each case.⁵

A dispute solely as to whether a workman shall belong to one trade union or another may, on the facts, be a trade dispute.⁶

¹ *Conway v. Wade* [1909] A.C. 506 at p. 510.

² *Ibid.*, p. 517.

³ *Ibid.*, pp. 520-1.

⁴ *Larkin v. Long* [1915] A.C. 814 at p. 833.

⁵ *Conway v. Wade* [1909] A.C. 506, p. 522.

⁶ *White v. Riley* [1921] 1 Ch. 1 ; see also *Hodges v. Webb* [1920] 2 Ch. 70.

CHAPTER VI

POLITICAL ACTION

THE political activities of trade unions are now governed by the provisions of the Trade Union Act, 1913,¹ as amended by s. 4 of the Trade Union and Trade Disputes Act, 1927. The Trade Union Act, 1913, was passed in consequence of the decision of the House of Lords in the famous case of *Osborne v. The Amalgamated Society of Railway Servants*.² In that case it was held that there was nothing in the Trade Union Acts from which it could be reasonably inferred that trade unions as defined by Parliament were meant to have the power of collecting and administering funds for political purposes, and that a rule which purported to confer on any trade union registered under the Act of 1871 a power to levy contributions from members for the purposes of securing parliamentary representation, whether it be an original rule of the union or a rule subsequently introduced by amendment was *ultra vires*³ and void.

It is, perhaps, of interest to observe, however, that so far as Lord James of Hereford was concerned, he stated that he had no objection to the funds of a trade union being devoted to the payment of the expenses of a member of Parliament who was to represent the interests of his union, provided such member was not bound to

¹ s. 2 & 3 Geo. V, c. 30.

² [1910] A.C. 87.

³ i.e. beyond the powers of the union. A trade union has power only to do that which is authorised by its constitution, i.e. its rules. Such rules must, however, be consistent with the requirements of the Trade Union Acts.

answer the whip of a particular political party.¹ Lord Shaw shared this objection on the ground that a pledge to answer the whip of a particular party was "fundamentally illegal, being in violation of that sound policy which is essential to the working of representative government." It would appear, therefore, that in the view of two members of the appeal tribunal, political action on the part of trade unions was not unlawful, provided there was no interference with the independence of the member of Parliament, who was being financed by such union. In a later case² the principle above laid down was extended to the securing of representation on municipal and other local bodies, although, for some reason or other, boards of guardians were expressly excluded from the prohibition.

So the position remained until the passing of the Trade Union Act in 1913, which provides that the funds of a trade union, whether registered or unregistered, are not to be applied either directly or in conjunction with any other trade union, association, or body or otherwise indirectly in the furtherance of any of the political objects set out in the Act, unless the furtherance of such objects has been approved as an object of the union by a resolution passed on a ballot of members of the union.³

Political Objects

The political objects to which the Act applies are the expenditure of money—

(a) On the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election; or

¹ Osborne's Case, p. 98.

² *Wilson v. Amalgamated Society of Engineers* [1911] 2 Ch. 324.

³ s. 3 of the 1913 Act.

(b) On the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or

(c) On the maintenance of any person who is a member of Parliament or who holds a public office ; or

(d) In connection with the registration of electors or the selection of a candidate for Parliament or any public office ; or

(e) On the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression " public office " in this section means the office of member of any county, county borough, district, or parish council or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

The exact meaning and scope of the word " political," as used in the above section, has yet to be decided judicially.¹ It will also be observed that it is only expenditure on the " distribution " of the political literature that is prohibited. The question therefore arises whether expenditure on preparing, printing, publishing and issuing, as apart from distributing, such literature is also prohibited.² It is thought, however, that in all probability the courts would interpret the term " distribution " as including the prior acts of preparing, printing, publishing and issuing such political literature and that consequently all such expenditure of union funds would come within the prohibition.

¹ But see s. 20 of the Copyright Act, 1911 ; also in re Meunier {1894}

² Q. B. D. 415 at p. 419.

³ See in re Stepney and in re Barrow-in-Furness (1886) 4 O'M. and H. 32 and 76.

Ballot

A ballot for the purposes of the 1913 Act must be taken in accordance with rules of the union, whether it be registered or unregistered. Such rules must be specially approved for the purpose by the Registrar of Friendly Societies.¹ The Registrar is, however, prohibited from approving such rules unless he is satisfied (i.) that every member has an equal right and if reasonably possible a fair opportunity of voting and that the secrecy of the ballot is properly secured,² and (ii.) that such ballot rules have been approved by a majority of the members of the trade union, voting for the purpose, or by a majority of delegates of such union, voting at a meeting called for the purpose.³

Upon his being so satisfied, the Registrar will issue his certificate and thereupon the rules have effect as rules of the union, even though the provisions of the rules of the union as to alteration of rules or the making of new rules have not been complied with.⁴ The ballot rules may be approved by a majority of delegates of the union voting at a meeting specially called for the purpose.⁵

The ballot rules having been approved by the Registrar, a resolution approving the furtherance of the said political objects as an object of the union must be balloted upon, and on receiving a majority of the members voting, such resolution takes effect as if it were a rule of the union, and may be rescinded in the same manner and subject to the same provisions as such a rule.⁶

Upon such resolution taking effect as a rule of the union, it becomes necessary to secure the approval of the

¹ Model rules for the ballot have in fact been prepared and approved by the Registrar of Friendly Societies. These rules must be strictly followed, or if it be desired to modify them, the consent of the Registrar must be obtained.

² s. 4 (2) of 1913 Act.

³ s. 3 (4), *ibid.*

⁴ s. 4 (2), *ibid.*

⁵ *Ibid.*

Registrar to further rules¹ which must be in force providing² :

(1) That any payments made in the furtherance of such political objects are to be made out of a separate fund (to be known as the political fund of the union).

(2) That a member of the union is not to be required to make any contribution to the political fund of the union, unless before the date upon which the contribution is first levied he has delivered at the head office or some branch office of the trade union, notice in writing in the appropriate form³ of his willingness to contribute to that fund, and has not withdrawn the notice.

(3) That any member who has not delivered such notice as aforesaid or has withdrawn it is to be exempt from the obligation to contribute to the political fund.

(4) That a member who is so exempt from the obligations to contribute is not to be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt.

(5) That contribution to the political fund is not to be made a condition for admission to the union.

The exclusion of an exempted member from the control or management of the political fund is, of course, based on the fact that he is not concerned with the administration of funds to which he has not contributed.

¹ Political rules at present in force must be altered so as to conform to the requirements of the 1927 Act; see p. 111, *supra*.

² See s. 3 (1) of the 1913 Act, as amended by s. 4 of the 1927 Act.

³ See Schedule to Trade Union Act, 1927.

If a member of a trade union alleges that he is aggrieved by a breach of any rule made under the Acts, he is entitled to complain to the Registrar of Friendly Societies. The Registrar, after giving the complainant and any representative of the union an opportunity of being heard, may, if he comes to the conclusion that a breach has been committed, make such an order for remedying the breach as he thinks just under the circumstances. Such an order is binding and conclusive on all parties without appeal and is not removable into any court of law or restrainable by injunction (in Scotland by interdict), and on being recorded in the county court (in Scotland the sheriff court), may be enforced as if it had been an order of such court.¹

The question has recently arisen whether an aggrieved member who has failed to substantiate his complaint before the Registrar that he is aggrieved by a breach of rule, has a right to launch proceedings in the High Court.*

Mr. Justice Eve said²: "According to the construction which I put on s. 3 (2) of the Act, the Legislature contemplated that the matter, dealt with as it has now been dealt with by the rules, should be determined by the tribunal indicated in that sub-section, and did not contemplate that it should be open to the member, after he had submitted the matter to the Registrar and had failed to convince the Registrar, to resort to the courts. Whether the sub-section left him entitled to elect whether he was to go to the Registrar or to the court has not been argued, but assuming that there was such an option it appears to me that this plaintiff adopted an attitude which showed what his election was and that it is not open to him, having failed before the Registrar, to proceed by action in this court."

¹ s. 3 (3) of the 1913 Act.

² *Forster v. National Amalgamated Union of Shop Assistants*, 43 T.L.R., p. 199.

³ *Ibid.*, p. 207.

The case was therefore decided in favour of the union on two grounds; first because the action was wrongfully conceived and improperly framed, and secondly because the plaintiff had already elected to go to the Registrar and had been defeated before he brought his action before the court. The question therefore whether a proper action, properly framed can be brought direct to the courts without previous recourse to the Registrar remains unsettled. S. 3 (2) of the 1913 Act, however, provides that "if any member of a trade union alleges that he is aggrieved by a breach of any rule . . . he may [not must] complain to the Chief Registrar," so that it would appear an open question whether the Legislature meant to exclude the jurisdiction of the courts.

Other Political Objects

It should be observed that political objects which do not fall within s. 3 may be included in the purposes of a trade union without a ballot. Moreover it would not be illegal for a trade union to include in its constitution the political objects set out in s. 3 of the 1913 Act so long as the furtherance of such objects did not involve the application of any part of the union funds.

The provision of the 1913 Act applies to a union which is in whole or in part an association or combination of other unions, as if the individual members of the component unions were the members of that union and not the unions. That is to say for the purposes of this Act, the individual members of the various federated unions are to be regarded as individual members of the Transport Workers' Federation. It is provided, however, that the component union may collect from such individual members who are not exempt under the Act any political contributions due to the political fund of the component union.¹

¹ s. 3 (3) of the 1913 Act.

Notice of Willingness to Contribute

No member of a trade union is to be required after the 31st day of December, 1927, to make any contribution to the political fund of a trade union unless he has delivered at the head office or branch office of the trade union a notice in writing of his willingness to contribute to that fund.¹ Such notice may be delivered at any time,² but it must be before the date on which the contribution is first levied. A notice is to be deemed to have been delivered at the appropriate office of the union if it has been sent by post properly addressed to that office.³ It may also be delivered personally or by an authorised agent, e.g. a union official.⁴

A notice of willingness to contribute to the political fund, when once it is delivered at the head office or branch office of the union by a member, will continue binding upon him until he withdraws same by giving written notice of withdrawal, which must be delivered at the appropriate office of the union.⁵ On this being done, the member will be deemed to have withdrawn his notice of willingness to contribute to the political fund as from the first day of January next after the delivery of the notice of withdrawal.⁶

Members Exempt from Contributions to Political Fund

Every member of a union who has not delivered a notice of his willingness to contribute to the political fund as aforesaid, or who, having delivered such notice, has withdrawn it, is to be deemed for the purposes of the Trade Union Act, 1913, to be a member who is exempt from the obligation to contribute to the political fund of the union.⁷

The above provisions reverse those of the Trade Union Act, 1913,⁸ which required the member objecting

¹ Trade Union and Trade Disputes Act, 1927, s. 4 (1).

² I.e. at any time subsequent to the passing of the 1927 Act.

³ Trade Union and Trade Disputes Act, 1927, s. 4 (1). ⁴ *Ibid.*

⁵ *Ibid.*, s. 4. ⁶ *Ibid.*, s. 4 (4). ⁷ See s. 5 thereof, now repealed.

so to contribute to contract out by signing a form of exemption, but it should be noted that the change is not to affect the right of trade unions to collect from their members the remaining contributions payable to their political fund for the year ending December 31, 1927.

Levies

All contributions to the political fund of the trade union must now be levied and made separately from any contributions to the other funds of the union.¹ This takes away the right of the unions to impose one general levy to cover all contributions, with provision for relieving members who are exempt from the payment of the political contribution, as contained in the 1913 Act, and in future all unions will have to make separate levies.

Assets

No assets of a trade union, other than the amount so raised by a separate levy, are to be carried over to the political fund, nor may any of the union assets, other than the amount so raised by a separate levy, be used for any of the political objects to which s. 3 of the Trade Union Act, 1913, applies.²

Rules

Union rules must be altered to comply with s. 4 of the 1927 Act within six months after the commencement of that Act³ or such further time as the Registrar in special circumstances may allow, and if the rules are not so amended,⁴ the political powers lapse. The rules may be altered either by a majority of the executive or other governing body of a union or by a majority of delegates of the union voting at a meeting called for the purpose.⁵

¹ Trade Union and Trade Disputes Act, 1927, s. 4 (2).

² *Ibid.*, s. 4 (2).

³ i.e. 17 & 18 Geo. v. c. 22, 1927, but political funds existing at this date may be administered under the old rules until so altered.

⁴ See Model Political Rules, issued by the Chief Registrar of Friendly Societies under the 1913 and 1927 Acts, *infra*, p. 270.

⁵ Trade Union and Trade Disputes Act, 1927, s. 4 (3).

CHAPTER VII

FRIENDLY SOCIETIES

ALTHOUGH the Chief Registrar of Friendly Societies, appointed under the provisions of the Friendly Societies Act, 1896,¹ is the official responsible for the registration of trade unions, and of all matters incidental thereto, yet it is specifically provided by s. 5 of the Trade Union Act, 1871,² that the Friendly Societies Acts are not to apply to any trade union, and that the registration of any trade union under any of the Acts dealing with friendly societies is to be void. This provision is, however, to a certain extent qualified by the Trade Union Act, 1876, which provides that, notwithstanding anything in s. 5 of the 1871 Act, a trade union, whether registered or not, which insures or pays money on the death of a child under ten years of age, is to be deemed to be within the provisions of the Friendly Societies Acts.³ Thus any trade union or branch paying money on the death of a child under ten years otherwise than is provided in the Friendly Societies Acts⁴ is guilty of an offence, and liable to a fine not exceeding £5, which is recoverable in a court of summary jurisdiction.⁵

Payments on Death of Children

The provisions above referred to are as follows, viz. no trade union or branch of a trade union, whether registered or unregistered, may insure or pay on the death

¹ 59 & 60 Vict., c. 25, s. 1.

² See ss. 62-7 of the 1896 Act.

³ *Ibid.*, s. 62.

⁴ *Infra*, p. 194.

⁵ *Ibid.*, ss. 84, 89.

of a child under three years of age any sum of money which exceeds, or which when added to any amount payable on the death of that child by any other society or branch or industrial insurance company exceeds, £6; or on the death of a child under six years of age exceeds £10; or on the death of a child under ten years exceeds £15.¹

The insurance of children is not restricted to children who are themselves members of the society insuring, but a member of a registered friendly society or branch cannot legally insure the payment of any sum beyond the sum necessary for the funeral expenses of the child.²

It should be observed that the prohibition in this section applies to the insuring, as well as to the payment, of a sum which exceeds the limits laid down.

Persons to Whom Payments may be Made

A society or branch, whether registered or unregistered, may only pay sums so due on the death of a child to the parent, or the personal representative of the parent, and only upon the production by the parent or his personal representative of a death certificate issued by the registrar of deaths.³

When application is made for a certificate of the death of a child for the above purposes, the name of the society or branch, and the sum sought to be obtained therefrom, must be stated to the registrar of deaths, who will endorse thereon the words: "To be produced to the society or branch [naming the same] said to be liable for the payment of the sum of £—" (stating same).⁴ The registrar is forbidden to give any certificates for the payment in the whole of any sum of money exceeding the amount contained in s. 62 of the Act (*supra*).⁵ Nor may he even issue a certificate until he has

¹ Friendly Societies Act, 1896, s. 62, as amended by s. 2 of Friendly Societies Act, 1924.

² *Ibid.*, sec. 2, p. ³ *Ibid.*, s. 63. ⁴ *Ibid.*, s. 64. ⁵ *Ibid.*, s. 65 (1).

entered the cause of death in the register of deaths, on the certificate of the coroner or of a registered medical practitioner.¹ Before paying the sums due on the death of a child, the society should first inquire what sums (if any) have been paid on the same death by any other society or branch.²

The above provisions do not, however, apply to insurances on the lives of children of any age where the person insuring has an interest in the life of the person insured.³

The interest which is insurable within the Act must be a pecuniary one,⁴ and proof of such interest and its extent is as a rule essential to the validity of a policy. But in certain cases an insurable interest is presumed, e.g. it is presumed that a man has an insurable interest in his own life,⁵ a wife in the life of her husband, and vice versa.⁶

It has been held, however, that a parent has no insurable interest in the life of a child, subject to there being a direct pecuniary interest.⁷

Contributions from one Society to another

A registered trade union or branch thereof may contribute to the funds and take part, by delegates or otherwise, in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine,⁸ but may not withdraw from contributing to the funds of any such medical societies, except on three months' notice to the society; and on payment of all contributions accrued or accruing due to the date of the expiration of the notice.⁹ Such

¹ Friendly Societies Act, 1896, s. 65 (2). ² *Ibid.*, s. 66. ³ *Ibid.*, s. 67

⁴ *Halford v. Kymer* (1830) 10 B. & C. 724.

⁵ *Wainwright v. Bland* (1836) 5 L.J. Ex. 147.

⁶ *Reed v. Royal Exchange Assurance Co.* (1795) Peake Add. Cas. 70; and *Griffiths v. Fleming* [1909] 1 K.B.D. 805.

⁷ *Halford v. Kymer* (*supra*); see also Fuller on *Friendly Societies*, 4th ed.

⁸ F.S.A., 1896, s. 22 (2).

⁹ *Ibid.*, s. 22 (3).

contributing unions are not members of the medical society to which they contribute so as to be bound by rules as to arbitration of disputes under the rules of the medical society.¹

While a trade union cannot be a registered friendly society, except for the purposes of National Health Insurance,² there would appear to be no reason why a trade union should not be an unregistered friendly society within the provisions of the Friendly Society Acts. An unregistered friendly society is a society for the purpose of providing by voluntary subscriptions of the members thereof, with or without the aid of donations, for the relief or maintenance of members and their dependants, the insurance on the birth of a member's child or the death of a member, the relief or maintenance of members in distressed circumstances, the endowment of members or other nominees, the insurance against fire or the guaranteeing of the performance of their duties by officers or servants of the society or any branch thereof.

It is evident that if the society is illegal at common law by reason of its being in restraint of trade, or otherwise, though it be a trade union it cannot be a friendly society of any type.³ If, however, there is nothing unlawful in its objects and the provisions as to trade benefits contained in the rules amount to nothing more than an insurance of the members against sickness or loss of wages by reason of shortness of work, etc., then it is thought that such a society may be an unregistered friendly society.⁴ The fact that the society is registered under the Trade Union Acts is irrelevant in this connection.⁵ The real test is whether the general objects of

¹ *Snell v. Vaise* (1800) F. Soc. Cas. 313.

² See s. 32 of the Health Insurance Act, 1924.

³ Act of 1896, s. 8.

⁴ *Hornby v. Close* (1867) L.R. 2 Q.B.D. 153; *Farrer v. Close* (1869) L.R. 4 Q.B.D. 602.

⁵ *Goazney v. Bristol Trade Society* [1900] 1 K.B.D. 901 at pp. 916, 920.

⁶ *Goazney's Case*. See per Cosens Hardy M.R., p. 916.

the society are lawful, notwithstanding the existence of some rules which might be in restraint of trade, and therefore illegal.¹

On the other hand, s. 5 of the Trade Union Act, 1871, does provide that the Friendly Societies Acts *shall not apply* to a trade union, and it may be argued, therefore, that the correct interpretation must be that a trade union cannot be treated in any way as an unregistered society under those Acts. The fact that specific provision for the limited application of the Friendly Societies Acts to trade unions is made in s. 2 of the Trade Union Act, 1871, and in s. 22 of the Friendly Societies Act, 1896, would appear to support this view. Moreover, it is interesting to note that, while guardians can recover the payment of outdoor relief from a friendly society or benefit society, whether it is registered or not, of which the pauper is a member,² yet there is no such right of recovery as against a trade union.³ The matter has, however, yet to be finally determined, and it therefore remains an open question as to whether a trade union may be an unregistered friendly society within the Friendly Societies Acts.

A person does not, by reason of his enrolment on service in the armed forces of the Crown, lose or forfeit any interest in an unregistered friendly society or branch, nor may he be fined for absence from, or non-attendance at, any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding⁴; disputes between such a member and

¹ *Sewins v. Wilson* (1889) 24 Q.B.D. 252.

² s. 23 of the Poor Law Amendment Act, 1876, in re *Merthyr Tydvil Guardians* (1881) 45 J.P. 220.

³ *Winder v. Governors and Guardians of Kingston-upon-Hull Corporation* (1888) 20 Q.B.D. 412; *Islington Guardians v. Amalgamated Society of Engineers* (1902) 66 J.P. 665.

⁴ s. 43 (1) of 1896 Act.

his society or branch are to be decided by a court of summary jurisdiction.¹

Although the deposit of the rules of the trade union under any of the Friendly Societies Acts is of no effect, yet, if a trade union is an unregistered friendly society, the rules may be held to constitute the contract between the members and the society, notwithstanding the provision in s. 5 of the 1871 Act, that "the deposit of the rules of any trade union . . . shall cease to be of any effect."²

Assurance

The Assurance Companies Act, 1909,³ which requires any persons or bodies of persons, whether corporate or incorporate, who carry on life, fire, accident, or employers' liability insurance, or bond investment, to deposit (*inter alia*) £20,000, render accounts, statements, and actuarial reports, in manner provided in the Act,⁴ does not apply to a registered trade union.

As regards unregistered trade unions, it is provided that, on the application of any unregistered trade union originally established more than twenty years before the commencement of the 1909 Act, the Board of Trade may extend to the trade union the exemption conferred by s. 1 of the Act on registered trade unions. The Board of Trade may also, on the application of an unregistered friendly society, extend to the society the exemption conferred by this Act on registered friendly societies, if it appear to the Board, after consultation with the Chief Registrar of Friendly Societies, that the society is one to which it is inexpedient that the provisions of the Act should apply.⁵

The Assurance Companies Act may therefore apply to unregistered trade unions. It should be noted that s. 7 of the Trade Union Act, 1876, has been repealed.⁶

¹ s. 43 (a) of 1896 Act. ² *Ashby v. Coslin* (1888) 21 Q.B.D. 401.

³ s. 1. ⁴ *Ibid.*, ss. 3, 5, 7. ⁵ *Ibid.*, s. 35. ⁶ *Ibid.*, s. 37.

The Assurance Companies Act does not apply to trade unions which are associations of employers provided they satisfy the Board of Trade that they are carrying on business wholly or mainly for the mutual insurance of their members against employers' liability or any other risk connected with the employment of workmen in the trades with which they are concerned as employers.¹

A trade union which carries on business as a life assurance company can apparently be wound up as an unregistered assurance company under the provision of the Companies (Consolidation) Act, 1908,² on a petition of ten or more policyholders, owning policies of the aggregate value of not less than £10,000, presented by leave of the court on proof of a *prima facie* case, with security for costs.

Companies Acts

A trade union cannot be registered under the Companies (Consolidation) Act, 1908.³ A trading company, therefore, which includes among its objects the imposing of restrictive conditions on the conduct of any trade or business is in law a trade union, and its registration as a limited liability company is void.⁴

It is not sufficient to show that the regulations imposing restrictive conditions on any trade are only such as are necessary to secure results beneficial to such trade.⁵ So that a trading association which fixes the rate at which trading companies, affiliated to the association, may charge for their goods, and a trade protection society

¹ Assurance Companies Act, 1909, s. 31.

² *Ibid.*, s. 15.

³ s. 5 of Trade Union Act, 1871.

⁴ *Edinburgh and District Aerated Manufacturing Defence Association Ltd. v. Jenkinson* (1903) 5 F. 1159; *British Association of Glass Bottle Manufacturers v. Nettlefold* (1911) 27 T.L.R. 527.

⁵ Per Lord Moncrieff in *Edinburgh and District Aerated Water Bottle Case* (*supra*) at p. 146.

which imposes restrictions on the affiliated trading companies as to the employment by them of particular persons, are trade unions in law.¹

The registration as a company of a society which is in part a trade union is not conclusive that the registration is lawful.²

Industrial and Provident Societies

The principle Act regulating industrial and provident societies is the Industrial and Provident Societies Act, 1893. It provides for the registration of societies with limited liability, in which no person other than a registered society may have any interest in shares exceeding £200. Such societies may carry on any industry, business, or trade specified by its rules.³

The liability of the members is limited, and their profits are exempted from income tax under Schedules C and D.⁴

It will be remembered that the Trade Union Act, 1913,⁵ provided that a trade union may apply its funds for any lawful objects or purposes for the time being authorised under its constitution, so that it is now possible for a trade union to carry on a trade or business, a purpose previously *ultra vires*.⁶ Owing, however, to the fact that a trade union cannot register either under the Companies Acts or under the Industrial and Provident Societies Act, the liability of the members of the union, in the event of the union incurring business or trade liabilities, will remain unlimited. In order to avoid such consequences, the practice adopted by most trade unions desirous of embarking on a trading venture is to establish a subsidiary industrial society or a subsidiary limited liability company.

¹ *Mineral Water Bottle Exchange v. Booth* (1887) 36 Ch.D. 465. See also *Aberdeen Master Masons' Incorporation Ltd. v. Smith* [1908] S.C. 669.

² *British Association v. Nettlefold* (1911) 22 T.L.R. 527.

³ s. 4. ⁴ s. 24; Income Tax Act, 1918, s. 39 (4). ⁵ s. 1 (1).

⁶ See p. 34, *supra*.

CHAPTER VIII

NATIONAL HEALTH INSURANCE

THE present system of health insurance was first established in this country by the National Health Insurance Act, 1911, which had for its principal object the establishment of a national insurance fund, to which the State, the employer, and the worker would contribute in proportionate shares, and out of which provision would be made for the worker in time of sickness, disablement, and unemployment. The 1911 Act was drastically amended by a number of Statutes passed between 1913 and 1923, all of which, however, have now been consolidated into the National Health Insurance Act, 1924, which is to-day the principal Act. So far as unemployment insurance is concerned, this is now outside the purview of the 1924 Act having become a matter subject to special Acts of Parliament.¹ As the average trade union official is only incidentally concerned with health insurance administration, this chapter will only deal with those matters of practical interest to those engaged in trade union activities.

Insured Persons

Under the 1924 Act, every person of the age of sixteen and upwards engaged in any of the employments specified in Part I. of the First Schedule of the Act must be insured.² Certain employments, such as employment in the forces of the Crown, or under any local or public

¹ See chap. ix. *infra*.

² Together with certain persons who are entitled to become "voluntary contributors"—s. 1 (3).

authority under conditions of service entitling the person to rights in a superannuation fund, or as a teacher, are excepted (Part II. of Schedule I.), but power is given to the Minister of Health to extend the Act to such excepted employments.¹

Exemptions

The following classes of employed persons are exempted from the operation of the Act, namely, those who prove that : (i.) they are in receipt of any pension or income of the annual value of £26 or upwards, which does not depend upon their personal exertions ; or (ii.) are ordinarily and mainly dependent for their livelihood upon some other person ; or (iii.) are ordinarily and mainly dependent for their livelihood on earnings derived from an occupation or employment which does not make them employed persons within the meaning of the Act, such as a teacher,² or (iv.) have not been employed as provided in the Act.

Contributions

The funds required for providing health insurance benefits are derived partly from contributions from employed persons, partly from contributions of the employers of those persons, and partly from moneys provided by Parliament.³

Approved Societies

Any trade union or branch thereof may be constituted an approved society, provided it complies with the requirements of the Act relating to approved societies.⁴

¹ National Health Insurance Act, 1924, s. 1.

² *Ibid.*, s. 2.

³ *Ibid.*, ss. 4 and 5 ; as to rates of contribution, see Part II. of First Schedule to Widow's Pension Act, 1925 ; and as to manner of paying contributions, see s. 7 of the 1924 Act. Note that the employer has to pay the employer's contribution even in respect of an employee exempted from the operation of the Act ; *ibid.*, s. 6.

⁴ 1924 Act, s. 29 (1).

There is nothing, however, to prevent a trade union establishing for the purposes of the Act a separate section, consisting of insured persons.¹ If the section is so constituted as to comply with the requirements of the Act relating to approved societies it may be approved by the Minister of Health, and will thereupon become an approved society. A branch of a trade union which is not separately registered may be recognised by the Minister for the purposes of the Act.²

Before a society can be approved by the Minister it must satisfy the following conditions, viz. (a) that the society is not carried on for profit; (b) that its constitution provides for its affairs being subject to the absolute control of its members; and (c) if the society has any honorary members, that its rules provide for their being excluded from voting on all matters arising under the Act.³ The Minister's approval may be unconditional or subject to the condition that the union within a specified time take all necessary steps, e.g. by alteration of rules, to make the society comply with the requirements of the Act relating to approved societies.⁴

A trade union including among its members persons resident in any national area, e.g. Scotland, other than that in which its registered or head office is situate, e.g. England, need only be approved in respect of England.⁵ If, however, a trade union has been approved for more than one national area, it may relinquish approval for any area other than that in which its registered office or head office is situate, upon satisfying the Joint Insurance Committee⁶ either that no person being a member of the society is resident in the national area in respect of which approval is proposed to be relinquished, or that any members so resident were, at the time when they were

¹ As to who may be an insured person see National Health Insurance Act, 1924, s. 1.

² *Ibid.*, and see s. 38.

³ *Ibid.*, s. 29 (2).

⁴ *Ibid.*, s. 29 (3).

⁵ *Ibid.*, s. 30 (1), and see s. 132.

⁶ See *ibid.*, s. 88.

admitted to membership of the society, resident in a national area in which the society will remain an approved society.¹

Rules of Approved Societies

Every trade union which is recognised as an approved society must make proper provision, by rules, to the satisfaction of the Minister, for the government of the society. If the union has branches, provision must be made for (a) the government of the union and its branches; (b) the determination of disputes arising between the society and any branch or between one branch and another; (c) the administration of benefits by branches; (d) the keeping of proper books of account by those branches; and (e) the depriving of, and suspending from, the right of administering benefits any branch guilty of maladministration of benefits, or which is convicted of any offence under the Act.² The union must also comply with any regulations as to the place in which meetings are to be held,³ and, where there is any statutory requirement that the rules are to be registered, any rules approved under this Act by the Minister must be registered forthwith, but until they are so registered they nevertheless have effect as if they had been duly registered.⁴ Approval of the rules by the Minister, followed by registration, cures any antecedent irregularity in the procedure at the meeting by or at which such rules were adopted.⁵

Every trade union which is an approved society is required to give adequate security to provide against malversation or misappropriation by its officials; the amount of such security is to be determined by the Minister.⁶

No security is, however, required when the only funds

¹ National Health Insurance Act, 1924 s. 30 (2). ² *Ibid.*, s. 34 (1).

³ *Ibid.*, s. 34 (2). ⁴ *Ibid.*, s. 34 (3). ⁵ *Re Quinn* [1921] 2 Ch.D. 518.

⁶ National Health Insurance Act, 1924 s. 35 (1).

coming into the hands of the union under this Act are such funds as are required for reimbursing the union in respect of sums previously expended by the union under the Act.¹ In the case of a union with branches having insured persons among their members, security is to be given by the union in respect of each branch.²

Any dividends or interest arising from securities deposited by a union under this section are to be paid or credited to the union.³

A trade union approved under this Act cannot be dissolved without the sanction of the Minister, who may make regulations for the manner and conditions in and upon which the dissolution may be carried into effect, notwithstanding anything contained in any Act regulating the constitution of the society, e.g. the Trade Union Acts.⁴

A trade union may cease to be an approved society if the Minister of Health should think fit to withdraw approval. Such withdrawal will follow failure on the part of the union to comply with any of the provisions or requirements of this Act relating to approved societies, or where the union or a branch thereof has been convicted of any offence under any Act regulating its constitution—e.g. for offences under the Trade Union Acts⁵—or under any other Act.⁶

In cases where the affairs of a branch of an approved society have been maladministered, the Minister may declare that the branch shall cease to be a branch for the purpose of the Act.⁷

The manner and conditions in and upon which the secession, expulsion, or dissolution of a branch of an approved society in respect of its business under this

¹ National Health Insurance Act, 1924, s. 35 (1).

² *Ibid.*, s. 35 (2).

³ *Ibid.*, s. 35 (4).

⁴ *Ibid.*, s. 37.

⁵ See chap. ii. *supra*, pp. 38-9.

⁶ National Health Insurance Act, 1924, s. 38 (1).

⁷ *Ibid.*, s. 38 (3).

Act may be carried into effect is to be provided for by regulations made under the Act.¹ Similar provision must also be made in respect of the amalgamation of two or more approved societies or branches thereof.²

Membership of Approved Societies

Any insured person, and any person entitled to become an insured person,³ may apply to an approved society for membership,⁴ but such application may be rejected by such approved society, in accordance with its rules.⁵ So that any trade union which is an approved society may, in accordance with its rules, admit or reject any person applying for membership, or even expel any insured member. But no application for membership is to be refused on the ground of the age of the applicant.⁶

A person must not be, or attempt to become, a member of more than one approved society at the same time, except that, in the case of a person who is a member of an approved society under this Act, he may also become a member of the same or any other society (e.g. a trade union) independently of the Insurance Act.⁷

Membership of an approved society may be terminated by giving the prescribed notice at the prescribed times and on complying with the prescribed conditions, including the payment to the society of the prescribed fee. Any person who entered into insurance within the two years immediately preceding the date on which he gave notice of his desire to terminate his membership, and who has not previously been transferred from some other approved society, is exempt from the payment of such fee.⁸ It should be noted that if it appears to the Minister, having regard to the interests of the society as

¹ National Health Insurance Act, 1924, s. 40.

² *Ibid.*, s. 39.

³ *Ibid.*, s. 41 (1).

⁴ *Ibid.*, s. 42.

⁵ *Ibid.*, s. 41 (2).

⁶ *Ibid.*, s. 1.

⁷ *Ibid.*, s. 41 (2).

⁸ *Ibid.*, s. 43 (1).

a whole, that it is not desirable that individual members of the society should be allowed to terminate their membership, the right of terminating such membership may be suspended by him, and, in such circumstances, no person may, except with the consent of the Minister, terminate his membership of that society.¹

If an insured person transfers from one approved society to another, a sum (called "transfer value") representing the liability under the Act of the first-mentioned society in respect of that person is to be transferred to the new society.²

Any member of an approved society who is a minor may execute all instruments required under the rules of the society, but may not be a member of the committee or a trustee, manager, or treasurer of the society or any branch thereof.³

Any business transacted under the Act by a trade union approved for the purposes of the Act is to be treated as part of the ordinary business of the union, and the requirements of the Trade Union Acts⁴ in relation to such ordinary business will apply in relation to the health insurance business transacted by the union.⁵

Administration of Benefits

Insured persons are entitled to the following benefits⁶:

(a) Medical treatment and attendance (called "medical benefit").

(b) Periodical payments to their insured members who are rendered incapable of work by some specific disease or by bodily or mental disablement of which notice has been given, commencing on the fourth day of the incapacity and continuing for a period not exceeding twenty-six weeks (called "sickness benefit").

¹ National Health Insurance Act, 1924, s. 43 (1).

² *Ibid.*, s. 43 (2).

³ *Ibid.*, s. 47.

⁴ See chap. II. *supra*.

⁵ National Health Insurance Act, 1924, s. 33.

⁶ *Ibid.*, s. 20.

(c) In the case of the disease or disablement continuing after the termination of the period during which sickness benefit may continue, periodical payments during the continuance of the incapacity for work (called "disablement benefit").

(d) A payment in the case of the confinement of the wife, or, where the child is a posthumous child, of the widow of an insured person, or of any other woman who is an insured person (called "maternity benefit").

Note, however, that maternity benefit is payable to the wife of an insured person, although the husband and wife are not cohabiting and the child is not the child of the husband.¹

(e) Additional benefits as set out in Part II. of the Fourth Schedule of the 1924 Act, when such benefits are payable.²

Medical benefit is administered through insurance committees,³ but the remaining benefits are administered by the approved societies, except in the case of insured persons who are not members of an approved society, when they are administered through the insurance committees.⁴

Trade unions which are registered as approved societies are empowered to make rules, with the consent of the Minister of Health, as to the administration and payment of the above-mentioned benefits.⁵ It has been held that, once the Minister has given his consent to such rules, a resolution of the union varying them would be illegal and *ultra vires*,⁶ although in general the courts will not interfere in cases of dispute where the matter is one of domestic administration.⁷

Trade unions may make subscriptions and donations

¹ *Scott v. Northumberland Friendly Society* [1920] 1 K.B.D. 174.

² National Health Insurance Act, 1924, s. 75.

³ *Ibid.*, s. 24.

⁴ *Ibid.*, ss. 13 and 14.

⁵ *Ibid.*, s. 22.

⁶ *Hard v. Pichthorne* [1913] 3 K.B.D. 290.

⁷ *Basley v. Co-operative Society* [1914] 2 K.B.D. 233.

to hospitals, dispensaries, and other charitable institutions, or for the support of district nurses, and may appoint nurses for the purpose of visiting and nursing insured persons. Any sums so expended are to be treated as expenditure on such benefits as may be prescribed.¹

Financial Provisions relating to Approved Societies

Every trade union registered as an approved society and every branch thereof must keep its books and accounts connected with health insurance administration separate from all other books and accounts, and in such form as may be prescribed. When required, such books and accounts must be submitted to audit by auditors to be appointed by the Treasury.²

The trade union or its branch must also submit to have its assets and liabilities under the Act valued in accordance with the provisions of the Act, and must furnish such returns as the Minister may from time to time require.³

The provisions of the Insurance Act relating to accounts, audit, valuation, and returns are to be substituted for the provisions of any other Act (e.g. Trade Union Acts) regulating the constitution of the trade union or its branch, so far as health insurance matters are concerned.⁴

Where a trade union or branch thereof transacts other business besides health insurance, all funds and credits of the union or branch held for health insurance purposes must be held as the security of the members for such purposes as if they belonged to a union or branch only carrying on health insurance business. Nor will such funds be liable for any contracts of the union or branch for which they would not have been liable had the business of the union or branch been only health insurance

¹ National Health Insurance Act, 1924, s. 26.

² *Ibid.*, s. 72 (1) (a).

³ *Ibid.*, s. 72 (1) (b) (d).

⁴ *Ibid.*, s. 72 (2).

business ; nor may such funds be applied to any purposes other than insurance.¹

The administration expenses of a union registered as an approved society or branch thereof, in respect of its health insurance business, must be kept in a separate account, showing the amount expended on administration by that union or branch thereof. The amount which may be carried to that account out of the health insurance contributions is to be limited, and any deficiency therein, if not otherwise defrayed, must be met forthwith by a special levy.²

A trade union which is registered both as an approved society under the Trade Union Acts, 1871-1917, and which carries on private business as well as health insurance business, may, with the consent of the Minister : (i.) keep a joint account of the administration expenses of both the private and the insurance business, or (ii.) pay out of the funds standing to the credit of the administration account, kept in respect of insurance business, to the administration fund kept in respect of its private business, any sum as prescribed by the Minister, on the condition that the private business administration fund bears all or part of the administration expenses incurred in respect of the health insurance business.³

A valuation of the assets and liabilities of a trade union or branch thereof arising out of national health insurance is to be carried out by a valuer to be appointed by or with the approval of the Treasury at the expiration of every five years or at such other times as the Minister may appoint.⁴

If, upon making such valuation, a surplus is found, this may be disposed of by distributing any one or more additional benefits among the insured members of the union or branch, in accordance with a scheme which

¹ National Health Insurance Act, 1924, s. 72 (3).

² *Ibid.*, s. 73.

³ *Ibid.*, s. 73.

⁴ *Ibid.*, s. 74.

must be submitted by the union or branch to the Minister for his approval.¹

If there is a deficiency in the funds of the union or branch thereof, no additional benefits may be distributed under the scheme, until the deficiency is extinguished.²

All contributions received in respect of health insurance are to be paid into a fund called the National Health Insurance Fund, which is under the control and management of the Minister of Health. Out of this fund are to be paid the sums required to reimburse trade unions acting as approved societies for any expenditure properly incurred by them in respect of benefits administered by them and in respect of the cost of administering such benefits.³

Provision is also made for adjusting the financial transactions between the Minister of Health and trade unions acting as approved societies by crediting and debiting to the trade unions sums received or paid by the Minister on behalf of the unions.⁴

Internal Government of Approved Societies

Any dispute between a trade union which is an approved society or a branch thereof and an insured person who is a member thereof, or who has ceased to be a member thereof, or between such a trade union and one of its branches, or between any two or more of its branches, is to be decided in accordance with the rules of the union subject to a right of appeal to the Minister of Health.⁵ The same procedure must be followed in cases of dispute between a trade union which is an approved society and any person as to whether that person is or was at any date a member of that society for the purposes of health insurance.⁶

¹ National Health Insurance Act, 1924, s. 75 (1) (a) (b).

² *Ibid.*, s. 75 (1) (c).

³ *Ibid.*, s. 65.

⁴ *Ibid.*, s. 71.

⁵ *Ibid.*, s. 90 (1) (a).

⁶ *Ibid.*, s. 90 (1) (b).

The courts will not interfere in cases of dispute where the matter is one of domestic administration,¹ but a question affecting the legality of the rules,² or whether the union has acted in an illegal and *ultra vires* manner is not a matter of domestic administration.³ Disputes between a trade union which is an approved society and an insurance committee,⁴ or between an insured person and an insurance committee, are to be decided in accordance with regulations issued by the Minister of Health.⁵ Similar provision is made for settling disputes as to whether any employment or any class of employment is within the 1924 Act, or whether a person is employed within the meaning of the Act,⁶ or whether a person is entitled to become a voluntary contributor,⁷ or as to the rate of contributions payable by or in respect of any insured person.⁸

Any trade union which is an approved society may, for the purpose of carrying on health insurance business, be registered as a friendly society under the Friendly Societies Act, 1896, notwithstanding that the contributions payable under the 1924 Act are not voluntary.⁹

¹ *Bailey v. Co-operative Wholesale Society* [1914] 2 K.B.D. 233.

² *Re Quinn* [1921] 2 Ch.D. 318.

³ *Heard v. Pechkorne* [1913] 3 K.B.D. 299; see also *Scott v. Northumberland and Durham Miners' Approved Society* [1920] 1 K.B.D.

174.

⁴ National Health Insurance Act, 1924, s. 48.

⁵ *Ibid.*, s. 90 (2).

⁶ *Ibid.*, s. 1 (1).

⁷ *Ibid.*, s. 1 (3).

⁸ *Ibid.*, s. 4.

⁹ *Ibid.*, s. 32.

CHAPTER IX

UNEMPLOYMENT INSURANCE

UNEMPLOYMENT insurance was first made obligatory in 1911, by Part II. of the National Health Insurance Act of that year. Its operation was, however, restricted to certain trades, such as building, constructional (of railways, docks, etc.), shipbuilding, mechanical engineering, ironfoundry, saw milling, and vehicle constructing trades.

Further amendments were introduced by various Acts passed between 1911 and 1919, all of which were repealed by the Unemployment Insurance Act, 1920, which, as amended, is now the principal Act regulating unemployment insurance.¹

Under the 1920 Act every person of the age of sixteen and upwards engaged in any of the employments specified in Part I. of the First Schedule of the Act must be insured.

Certain employments, such as employment in agriculture, in domestic service (with certain exceptions), under any local or public authority, in a police force, in the service of any railway company, or in any public utility company, or under conditions of service enabling the person employed to rights in a superannuation fund, established by or in pursuance of an Act of Parliament, are exempted (Part I. of Schedule I.), but power is given to the Minister of Labour to extend the Act to such excepted employments.²

¹ See *Industrial Law*, Slessor and Henderson, chap. xiii.

² Unemployment Insurance Act, 1920, s. 4.

The following classes of the employed persons are exempted from the operation of the Act, namely, those who prove that (i.) they are in receipt of any pensions or income of the annual value of £26 or upwards which does not depend upon their personal exertions, or (ii.) are ordinarily and mainly dependent for their livelihood upon some other person, or (iii.) those who are ordinarily and mainly dependent for their livelihood on earnings derived from an occupation, employment in which does not make them employed persons within the meaning of the Act, such as a domestic servant.¹

Contributions

The funds required for providing unemployment benefits are derived partly from contributions by employed persons, partly from contributions by the employers of those persons, and partly from moneys provided by Parliament.²

Unemployment Benefit

Unemployment benefit is paid direct by the Labour Exchange or through an approved society,³ power being given to the Minister of Labour to make an arrangement with such society to repay such sums as are expended to their members, in respect of unemployment, equal to what such members would have received if no such arrangement had been made.⁴ The payment of unemployment benefit to the insured contributor is subject to the following conditions⁵:

¹ Unemployment Insurance Act, 1920, s. 3.

² *Ibid.*, s. 5; for present rates of contribution see Unemployment Insurance Act, 1923, First Schedule; for manner of payment see s. 3, *ibid.*

³ Any trade union or branch thereof may be an approved society if it complies with the requirements of the Insurance Acts (*supra*, p. 121).

⁴ Unemployment Insurance Act, 1920, s. 17.

⁵ *Ibid.*, s. 7, as amended by s. 3 of the Unemployment Insurance Act, 1924.

Conditions for receipt of Unemployment Benefit

(i.) That he proves that not less than thirty contributions have been paid in respect of him under this Act since the beginning of the first of the two insurance years next before the beginning of the benefit year in which the application is made.

(ii.) That he has made application for unemployment benefit in the prescribed manner, and proves that since the date of application he has been continuously unemployed.¹

(iii.) That he is capable of and available for work.

(iv.) That he is genuinely seeking work but unable to obtain suitable employment.

(v.) That he has attended any course of instruction when required to do so by an insurance officer.

It is, however, further provided² that a person is not to be deemed to have failed to fulfil the above statutory conditions by reason only that he has declined :

(a) An offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute ; or

(b) An offer of employment in the district where he was last ordinarily employed at a rate of wages lower, or on conditions less favourable, than those which he might reasonably have expected to obtain having regard to those which he habitually obtained in his usual employment in that district, or would have obtained had he continued to be so employed ; or

(c) An offer of employment in any other district at a rate of wage lower, or on conditions less favourable, than those generally observed in that district by agreement between associations of employers and

¹ As to meaning of "continuously unemployed," see s. 5 of the 1923 Act.

² Unemployment Insurance Act, 1920, s. 7 as amended by s. 3 of the 1924 Act.

employees, or, failing any such agreement, than those generally recognised in that district by good employers.

Right to Review

An insured contributor whose application for unemployment benefit is refused on the ground that he has not fulfilled the statutory condition that he is capable of and available for work but unable to obtain suitable employment is entitled to have his application reviewed from time to time,¹ and the Minister may until June 30, 1927, if he thinks fit so to direct, authorise the payment of unemployment benefit to an insured person even though the first statutory condition (*supra*) has not been fulfilled.²

A person is not to be deemed to be unemployed who is following any occupation from which he is deriving any remuneration or profit, unless he be a person who when employed at his former occupation carried on in addition some other trade or business in his spare time, and after losing his main employment continued with his additional business, provided his daily remuneration therefrom does not exceed 3s. 4d. per day.³ For instance, a miner who, in his spare time, after doing his day's work in the mine, works as a cinema attendant and earns thereby not more than £1 per week, if he subsequently becomes unemployed as a miner, so long as his earnings do not exceed £1 per week, will be entitled to unemployment benefit.

Disqualifications for Unemployment Benefit⁴

An insured contributor who has lost his employment by reason of a stoppage of work due to a trade dispute at

¹ Unemployment Insurance Act, 1921 (No. 2), s. 10.

² Unemployment Insurance Act, 1925, s. 2.

³ Unemployment Insurance Act, 1920, s. 7 (2).

⁴ See s. 8 of the 1920 Act for the various disqualifications for receiving unemployment benefit.

a factory, workshop, or other place of employment is to be disqualified for receiving unemployment benefit so long as the stoppage of work continues.¹ This provision does not, however, apply where he has become a bona-fide employee elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation.¹

The above provisions as to disqualification do not, however, apply in any case in which the insured contributor proves that he is not participating in or financing or directly interested in the trade dispute which caused the stoppage of work, and that he does not belong to a grade or class of workers, members of which are participating in or financing or directly interested in the dispute. Nor is it to apply where the stoppage is due to an employer acting in a manner so as to contravene the terms of any agreement existing between a group of employers where the stoppage takes place or of a national agreement to either of which the employers and employees are contracting parties.²

Further Requirements

In addition to the statutory conditions which must be fulfilled,³ the insured contributor must have made six contributions for each week's benefit paid, and at least twenty of his thirty contributions must have been paid since the beginning of the insurance year preceding the benefit year.⁴ The maximum period in respect of which benefit is payable must not exceed twenty-six weeks in any one year.⁵

¹ Unemployment Insurance Act, 1920, s. 8.

² Unemployment Insurance Act (No. 2), 1924, s. 4. ³ *Supra*, p. 134.

⁴ Unemployment Insurance Act (No. 2), 1924, s. 1 (2).

⁵ *Ibid.*

Arrangements

The Minister of Labour is empowered, on the application of a trade union, approved under the National Health Insurance Act, 1924, or any other association of employed persons,¹ if the rules of such union or association provide for payments to the members thereof while unemployed, to make an arrangement with such union or association (i.) that unemployment benefit shall be paid to their members under the rules of the union or association instead of under this Act, and (ii.) that there shall be repaid periodically to the union or association out of the unemployment fund such sum as appears to be equivalent to the aggregate amount which their members would have been entitled to receive during that period by way of unemployment benefit under this Act, if no such arrangement had been made.²

No such arrangement may be made unless the Minister is satisfied that the payments authorised by the rules of the union to its unemployed members exceeds, in respect of periods of unemployment amounting in the aggregate to not less than thirteen weeks in a period of twelve months, by at least five shillings per week in the case of men, four shillings per week in the case of women, two shillings and sixpence per week in the case of boys, and two shillings per week in the case of girls, and in respect of any further periods of unemployment in the same period of twelve months by at least half the several amounts aforesaid, the provision represented by unemployment benefit at the rate payable under this Act. In addition the Minister must be satisfied that the union's system of ascertaining wages and conditions prevailing in every employment in which its members are engaged and of

¹ With certain exceptions, see Unemployment Insurance Act, 1920, s. 17 (1).

² Unemployment Insurance Act, 1920, s. 17 (1); see also s. 12 of the Unemployment Insurance Act (No. 2), 1921, as amended by s. 9 of the Unemployment Insurance Act, 1922.

obtaining from employers notification of vacancies for employment and giving notice thereof to its members is reasonably effective for securing that their unemployed members are brought with all practicable speed into communication with those employers having vacancies to fill.¹

Where such an arrangement has been made, the contributions due from any of the members of the union to the unemployment fund under this Act are to be treated as if such contributions formed part of the subscriptions payable by those members to the union, and notwithstanding anything in the rules of the union, the rates of subscription of such members may be reduced accordingly.²

For the purposes of the Act, the amount of any sum which, but for this section, would have been paid to any person by way of unemployment benefit is to be deemed to have been paid.³

Regulations may be made by the Minister for giving effect to this section and for referring any question which may arise under this section to the insurance officers, courts of referees, or the umpire.⁴

The fact that persons other than employed persons can be members of a union does not prevent the union being treated as a union for the purposes of making arrangements under this section, if the union is substantially a union for the benefit of employed persons.⁵

The Minister may with the consent of the Treasury pay to any union with which an arrangement under this section is in force, by way of contribution towards the administrative expenses of the union in connection with the arrangement, such sum, not exceeding in any year an amount calculated at the rate of one shilling for each

¹ Unemployment Insurance Act, 1920, s. 17, as amended by No. 2 Act, 1924, Second Schedule.

² Unemployment Insurance Act, 1920, s. 17 (2).

³ *Ibid.*, s. 17 (3). ⁴ *Ibid.*, s. 12. ⁵ *Ibid.*, s. 17 (5).

week of the aggregate number of weeks of unemployment in respect of which a repayment is made to the union under this section as he thinks fit. Any sum so paid is to be treated as part of the expenses incurred by the Minister under this part of the Act.¹

Schemes

The power of the Minister under s. 18 of the 1920 Act to make special orders approving or making special schemes for the provision of insurance against unemployment in any industry is suspended until the expiration of one year from the termination of the deficiency period referred to in s. 16 of the Unemployment Insurance (No. 2) Act, 1921.²

Disputes, etc.

Any question arising as to the application of the Unemployment Insurance Acts is to be decided by the Minister of Labour, with a right of appeal to the High Court.³ In addition, machinery has been established for dealing with claims to unemployment benefit. The claim is first made to what are known as insurance officers who are appointed for various areas.⁴ Failing satisfaction, the matter may then be taken before a Court of Referees,⁵ consisting of one or more members chosen to represent employers, with an equal number of members chosen to represent insured contributors, with an independent chairman appointed by the Minister.⁶ A final appeal lies to the umpire, who is appointed by the Crown.⁷

¹ Unemployment Insurance Act, 1920, s. 17 (6).

² Unemployment Insurance Act (No. 2) 1924, s. 8; see also Unemployment Insurance Act, 1920, ss. 18-21.

³ Unemployment Insurance Act, 1920, s. 10. ⁴ *Ibid.*, s. 11 (1).

⁵ *Ibid.*, s. 13.

⁶ *Ibid.*

⁷ *Ibid.*, s. 12 (1).

Extended Benefit

A further benefit, called Extended Benefit, is also payable in certain circumstances. This benefit, which is in the discretion of the Minister of Labour, was designed to meet abnormal conditions. It is to be distinguished from the ordinary benefit payable under the Act, in that insured persons are entitled as of right to the ordinary unemployment benefit,¹ whereas extended benefit is entirely in the discretion of the Minister. Extended benefit is payable to the insured contributor who, although he has fulfilled the statutory conditions,² has either (i.) not paid twenty or more contributions in the twelve months preceding the benefit year, or (ii.) has already received benefit for periods amounting to the aggregate to twenty-six weeks in the benefit year in which the application is made. In such cases, extended benefit is payable in the discretion of the Minister to such insured contributor provided he satisfies the following requirements :

- (a) That he is normally employed in an insurable occupation.
- (b) That in normal times insurable employment would be available for him.
- (c) That during the two years immediately preceding the date of application for benefit he has been employed in an insurable employment for a reasonable period.
- (d) That he is making every reasonable effort to obtain employment.³

Extended benefit as a rule is refused by the Minister to single persons residing with their parents, married women, short-time workers earning half or more of their full-time earnings, and certain aliens.

¹ *Supra*, p. 133.

² *Supra*, p. 134.

³ Unemployment Insurance Act (No. 2), 1924, s. 1 (3).

CHAPTER X

CONCILIATION AND ARBITRATION

Conciliation

So long ago as the reign of Queen Anne, Acts of Parliament were passed with the object of encouraging arbitration in trade disputes. Later Conciliation and Arbitration Acts were passed in 1824, 1867, and 1872. In 1896, however, all existing Acts affecting arbitration between master and workmen in trade disputes were repealed by the Conciliation Act of that year,¹ now the principal Act, which was passed with the object of preventing trade disputes, through the introduction and establishment of district conciliation boards representing both masters and workmen. Under this Act, conciliation boards, constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, may be registered. Proceedings for conciliation before a registered conciliation board are to be conducted in accordance with regulations made by the board itself.²

The Act also provides that where a difference exists or is apprehended between an employer or any class of employers and workmen, or between different classes of workmen, the Minister of Labour may exercise all or any of the following powers :³

(a) Inquire into the causes and circumstances of the difference ;

¹ 59 & 60 Vict., c. 30.

² *Ibid.*, s. 1.

³ *Ibid.*, s. 2 (1).

(b) Take such steps as to him may seem expedient for the purpose of enabling the parties to the difference to meet together by themselves or their representatives under the presidency of a chairman mutually agreed upon or nominated by the Minister of Labour or by some other person or body, with a view to the amicable settlement of the difference ;

(c) On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator, or as a board of conciliation ;

(d) On the application of both parties to the difference, appoint an arbitrator.

“11

Where a person is appointed to act as conciliator, his duty is to inquire into the causes and circumstances of the difference by communication with the parties, and otherwise to endeavour to bring about the settlement of the difference. Where a settlement of the difference is effected either by conciliation or by arbitration, memoranda of the terms thereof are to be drawn up and signed by the parties or their representatives, and a copy thereof delivered and kept by the Minister of Labour.¹

Conciliation boards are usually organised by the employers and workmen themselves in a particular industry, and are in no way subject to the control of the Government or other public authorities. The Conciliation Act of 1896 does, however, provide that, where it appears to the Minister of Labour that in any district or trade adequate means do not exist for having disputes submitted to the conciliation board for the district or trade, the Minister may appoint any person or persons to inquire into the conditions of the district or trade

¹ Conciliation Act, 1896, s. 2 (2).

and to confer with the employers and employed, and, if the Minister thinks fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade. When a conciliation board is so formed for a particular district or trade, it is a private institution in the sense that it is controlled by the employers and workmen themselves, independent of any Government control.¹

Arbitration

The ordinary tribunals in this country have no jurisdiction over disputes arising out of employment (as distinguished from contracts in respect thereof), nor were any attempts made by legislation to provide tribunals for the purpose of dealing with any such disputes until 1919, in which year the Industrial Courts Act was passed.² The principal object of the Industrial Courts Act was to provide machinery for the settlement of trade disputes, through the medium of an Industrial Court. Provision was also made for the setting up of courts of inquiry into the causes and circumstances of any trade dispute. The Act does not embody any principle of compulsory arbitration, as the consent of both parties to an industrial dispute must precede any reference to the Industrial Court, or to a board of arbitration established under the Act, but such consent is not required for the purpose of setting up a court of inquiry into the causes and circumstances of the dispute, and the Minister of Labour may exercise his own discretion in the matter. It should be noted that the Industrial Court has the power to compel the attendance of witnesses.

The Act provides that, where any trade dispute, whether existing or apprehended, is reported to the Minister by or on behalf of either of the parties to the

¹ Conciliation Act, 1896, s. 4.

² 9 & 10 Geo. V, c. 69.

dispute, the Minister shall thereupon take the matter into his consideration, and take such steps as seem to him expedient for promoting a settlement thereof.¹ The Minister may, if he thinks fit, and if both parties consent, either: (1) refer the matter for settlement to the Industrial Court; or (2) refer the matter for settlement to the arbitration of one or more persons appointed by him; or (3) refer the matter for settlement to a board of arbitration consisting of one or more persons nominated by or on behalf of the employers concerned and an equal number of persons nominated by or on behalf of the workmen concerned and an independent chairman nominated by the Minister. In order to facilitate the nomination of persons to act as members of a board of arbitration, it is the duty of the Minister of Labour to constitute panels of persons appearing to him suitable so to act. Such panels are to include women.²

The Minister may also refer to the Industrial Court for advice on any matter relating to, or arising out of, a trade dispute in general, or trade disputes of any class, or any other matter which, in his opinion, ought to be so referred.³ The expression "trade dispute" is defined under the Act as meaning any dispute or difference between employers and workmen, or between worker and worker, connected with the employment or non-employment or the terms of employment, and with the conditions of labour of any person.⁴

The Industrial Court does not form part of the ordinary judicial system of the country. It is a special statutory tribunal set up with the principal object of providing machinery for the settlement of trade disputes. It is quite independent of the ordinary machinery of legal administration, and is in no sense under the control of the Government or of any Government Department,

¹ Industrial Courts Act, 1919, s. 2 (1).

² *Ibid.*, s. 2 (3).

³ *Ibid.*, s. 2 (2).

⁴ *Ibid.*, Part IV.

except in so far as the members of the Industrial Court are appointed by the Minister of Labour.

Constitution of Industrial Court

An Industrial Court consists of persons appointed by the Minister of Labour, some of whom are independent persons, some are persons representing employers, some representing workmen, together with one or more women.

Members of the Industrial Court hold office for such term as may be fixed by the Minister at the time of his appointment.

For the purpose of dealing with any matter which may be referred to it, the court must be constituted of such members of the court as the president may direct.

The president of the court is invariably a lawyer of high standing, and the chairman of any division of the court is such person, being one of the independent persons aforesaid, as the Minister may by order, either generally or specially, appoint.¹

Procedure of Industrial Court

The procedure of the Industrial Court is subject to the rules made by the Minister of Labour under the Act. Such rules must provide for reference in certain cases to a single member of the court, and must provide for enabling the court to sit in two or more divisions, and to sit with assessors, who may be men or women, for enabling the court or any division of the court to act, notwithstanding any vacancy in their number, and for enabling questions as to the interpretation of any award to be settled without special report or reference.² The general procedure is very similar to the procedure in the ordinary courts of law, except that, owing to the fact

¹ Industrial Courts Act, 1919, s. 2.

² *Ibid.*, s. 3.

that the greater part of the interlocutory proceedings, which are applicable in the ordinary courts, is unnecessary in connection with Industrial Courts, matters can be much more easily expedited in the Industrial Court than is the case in the ordinary courts. There is also much more freedom from formality, and as most cases are conducted by the officials of the employers' and workmen's associations concerned without the assistance of either barristers or solicitors, costs are kept down to a minimum. In proceedings before the Industrial Court or a board of arbitration established under the Act, advocates, whether professional or otherwise, have the same rights and privileges as advocates in the ordinary courts of law.

CHAPTER XI

WORKMEN'S COMPENSATION

THE principal Act relating to workmen's compensation is the Workmen's Compensation Act, 1925,¹ which consolidated with amendments the Workmen's Compensation Acts, 1906, 1923. This Act is of great importance to all those employed in industry, and should be carefully studied.²

Claims under the Acts

The principal provisions of the Act are as follows :

If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the provisions hereinafter contained.³

(a) "Personal Injury by Accident"

The workman must therefore in the first place show that he has suffered "personal injury by accident." The term "injury by accident" has been the subject of numerous decisions in the courts, but the House of Lords eventually laid it down in the case of *Fenton v. Thorley & Co., Ltd.*⁴ that the word "accident" as used in the Act is to be used "in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward

¹ 25 Geo. V, c. 84.

² See also Slessor and Henderson's *Industrial Law* (Benn), chap. iv.

³ 1925 Act, s. 1.

⁴ [1903] A.C. 443.

event which is not expected or designed" (per Lord MacNaughten at p. 446).

The occurrence or mishap which results in the injury is to be looked at from the workman's point of view, so that whatever the cause or origin, it will be accidental unless it was designed by the workman himself. Thus in *Trim Joint District School v. Kelly*,¹ which was a case in which a teacher in an industrial school was the victim of a conspiracy among the boys to assault him, and in pursuance of the conspiracy two of the boys struck him fatal blows while he was on duty, the House of Lords held that the above definition included any injury and any mishap "unexpected by the workman, irrespective of whether or not it was brought about by the wilful act of someone else."

It should be observed that the expression is not "by an accident"; the term has a much wider signification, and includes (i.) personal injury sustained under circumstances which can be referred to as "an accident," e.g. by indiscriminate stone-throwing,² and (ii.) cases in which, though there be no accident, the results of the occurrence may be so unexpected as to be fairly considered as being accidental, e.g. over-exertion or strain in the ordinary course of work causing rupture or some similar injury.³

(b) "Arising out of and in the Course of Employment"

It is a question of fact as to whether or not the accident arises out of or in the course of the employment, and if there be evidence to support the arbitrator's finding, the finding cannot be disturbed.⁴

It is proposed to consider first the application of the term "the course of employment," and subsequently to deal with the term "arising out of."

¹ [1914] A.C. 667.

² *Challis v. L.S.W. Railway Co.* [1905] 2 K.B. 154.

³ *Fenton v. Thorley*, *supra*.

⁴ *Davidson v. M'Robb* [1918] A.C. 304.

"The Course of Employment"

There can be no right to compensation unless the accident happened during the course of the employment or service. In the course of the employment means in the course of the work which the man is employed to do, and what is incident to it ; in other words, in the course of his service. It does not mean " during the currency of the time of engagement."¹

As a general rule employment begins when the workman has reached the place where he has to work, or the ambit, scope, or scene of his labour or duty, and it does not extend so as to cover the period of going or returning.² So that a workman who was attacked on the streets by strikers while returning home from work was held not entitled to compensation.³ But a workman is entitled to an interval of time and space in going to and returning from the scene of his employment, during and in which his employment exists.⁴ Thus in the case of *Mole v. Wadsworth*,⁵ the court held that there was an implied term of the contract that the employer should provide a boat to enable his workmen to go to and from their work, and that the applicant who was injured while travelling from his work on the boat was injured in the course of his employment.

The question sometimes arises whether a workman who leaves his employer's premises or breaks off his actual work continues during such absence or cessation of work to be in the course of his employment. If the workman leaves his work or is absent from his employer's premises upon the express or implied instruction of his employer, and for his employer's purposes, the workman's course of employment continues so long as he is so acting on his employer's behalf.⁶ On the other hand, where a

¹ *Davidson v. M'Robb* [1918] A.C. 304.

² *Wright v. Scott* (1918) 5 B.W.C.C. 431.

³ *Doulton v. Kelsall* (1912) 5 B.W.C.C. 318.

⁴ *Simpson v. Bolsover Colliery Co. Ltd.* (1930) 13 B.W.C.C. 173.

⁵ (1913) 6 B.W.C.C. 128.

⁶ See *Hewitson v. St. Helen's Colliery* [1924] A.C. 39.

workman is absent from work or his employer's premises for his own purposes, with or without leave, his course of employment does not continue.¹

“Arising out of”

An accident resulting in the death of or serious and permanent disablement of a workman is deemed to arise out of and in the course of his employment notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, e.g. Coal Mines Explosives Orders, or of any orders given by and on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.²

In cases not covered by the above, it is still material to inquire whether the act done was in contravention of regulation, order, or instruction, but in other cases it is immaterial how the workman performed his duties so long as he can show he was performing legitimate work (*Gibbons v. British Dyes*).³

A recognised custom or practice known to the employer on the part of the workman to ignore an express prohibition or to act in a manner which has caused the injury will be regarded as a tacit annulment of the prohibition and the workman will be entitled to compensation.⁴

“Larking”

Injuries so sustained do not of themselves arise out of and in the course of employment, for it is not within the scope of employment of workmen to indulge in “larking” during their working hours. This principle was, however, modified by the House of Lords in *Clayton v. Hardwick*

¹ *Davidson v. M'Robb* [1918] A.C. 304, 315.

² s. 1 (2) of the 1925 Act. ³ (1918) 11 B.W.C.C. 180.

⁴ *Douglas v. United Mineral Co.* (1900) 2 W.C.C. 15.

Colliery,¹ in which it was held that it was for the arbitrator to decide from the evidence before him as to whether there is present in the circumstances of the employment such a special risk as would render the injury incidental to the employment. The special risk of "larking" in Clayton's case arose out of the employment of boys to pick stones out of coal, and the injury was caused by a stone thrown by one of the boys. As to risks incidental to employment it was held in *Nisbet v. Rayne and Burn*² that a colliery cashier who was murdered in a railway train whilst travelling on one of his periodical journeys with the money for wages was killed in the course of his employment.

Limitation of Time

A workman is not entitled to compensation unless he is disabled by his injury for a period of at least three days from earning full wages at the work at which he was employed, and if the incapacity lasts less than four weeks, he will not be entitled to compensation in respect of the first three days.*

Serious and Wilful Misconduct

If it is proved that injury to a workman is attributable to his serious and wilful misconduct, any compensation claimed in respect of the injury must, unless the injury results in serious and permanent disablement, be disallowed.*

Persons entitled to Compensation

Compensation is payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependants.

Where there are both total and partial dependants nothing in the Act is to be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

¹ (1916) 9 B.W.C.C. 136.

² 1925 Act, s. 1 (1) (a), and s. 9 (1).

³ (1920) 3 B.W.C.C. 507.

⁴ *Ibid.*, s. 1 (1) (b).

Meaning of "Member of a Family"

The expression "member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.¹

Meaning of "Employer"

The expression "employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer. Where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter is to be deemed to continue to be the employer of the workman whilst he is working for that other person.

In relation to a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained from the owner thereof under a contract of bailment, the owner of the vehicle or vessel is to be deemed to be the employer.

In relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee, of the club is to be deemed to be the employer.²

Liability in Case of Workmen employed by Contractors

Where any person (in the Act referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in the Act referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal is liable to pay to any workman employed in the execution of the work

¹ Workmen's Compensation Act, 1925, s. 4.

² *Ibid.*, s. 5.

any compensation which he would have been liable to pay if that workman had been immediately employed by him. Where compensation is claimed from or proceedings are taken against the principal, then references to the principal are substituted for references to the employer, except that the amount of compensation is to be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Where, however, the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone is liable to pay compensation to any workman employed by him on such work.

A principal who is liable to pay compensation is entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of the Act, and a workman may recover compensation under the Act from the contractor instead of the principal.

These provisions do not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.¹

Provision as to Cases of Bankruptcy of Employer

Where any employer has entered into a contract with any insurers in respect of any liability under the Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or

¹ Workmen's Compensation Act, 1925, s. 6.

undertaking having been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability are transferred to and vest in the workman. Upon any such transfer the insurers have the same rights and remedies and are subject to the same liabilities as if they were the employer, but the insurers are not under any greater liability to the workman than they would have been under to the employer.

If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

There is included amongst the debts which—

(i.) under s. 33 of the Bankruptcy Act, 1914, and s. 118 of the Bankruptcy (Scotland) Act, 1913, are in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts ;

(ii.) under 209 of the Companies (Consolidation) Act, 1908, are in the winding-up of a company to be paid in priority to all other debts ; and

(iii.) under s. 107 of the Companies (Consolidation) Act, 1908, are to be paid in priority to any claim for principal or interest in respect of debentures ;

the amount¹ due in respect of any compensation or liability for compensation accrued before the following date, that is to say :

- (a) In the first case the date of the receiving order ;
- (b) In the second case the date of the commencement of the winding up of the company ;

¹ The full amount of compensation due may be claimed.

(c) In the third case the date of the appointment of the receiver or of possession being taken mentioned in the said s. 107.

Where the compensation is a weekly payment, the amount due in respect thereof is taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the Act.

In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, has the like priority as is conferred on wages of miners by s. 9 of that Act.

The provision with respect to preferences and priorities do not apply where the bankrupt or the company has entered into such a contract with insurers as aforesaid.

A company which is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company is not affected by the above provisions.¹

Amount of Compensation : Amount in Fatal Cases

The compensation payable where death results from the injury is a lump sum together with, if the workman leaves a widow or other member of his family (not being a child under the age of fifteen) wholly or partially dependent upon his earnings, and in addition leaves one or more children under the age of fifteen so dependent, an additional sum (hereinafter referred to as the children's allowance). The lump sum and children's allowance (which are added together and dealt with as a single sum) must not, however, in any case exceed in the aggregate £600.

¹ Workmen's Compensation Act, 1925, s. 7.

Rules

The lump sum is calculated in accordance with the following rules :

(i.) If the workman leaves any dependants wholly dependent on his earnings, the lump sum is to be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £200, whichever of those sums is the larger, but not exceeding in any case £300.

(ii.) If the period of the workman's employment by the said employer has been less than the said three years, the amount of his earnings during the said three years is deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer.

(iii.) There must be deducted from the sum as above calculated the amount of weekly payments (if any) made to the workman before his death but not so as not to reduce the lump sum below £200. If such weekly payments have been redeemed under the Act, there must also be deducted the amount paid in respect of the redemption thereof.

(iv.) If the workman does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the lump sum is such sum not exceeding in any case the amount payable under the foregoing rules as may be agreed upon or, in default of agreement, may be determined by arbitration under the Act to be reasonable and proportionate to the injury to the said dependants.

(v.) If the workman leaves no dependants, the lump sum is an amount equal to the reasonable expenses of his medical attendance and burial, not exceeding £15.

Rules as to Children's Allowance

The amount of the children's allowance is calculated in accordance with the following rules :

(i.) If both the widow or other member of the workman's family and such child or children as aforesaid were all wholly dependent on the workman's earnings, the children's allowance in respect of each such child is a sum equal to fifteen per cent. of the amount arrived at by multiplying the average weekly earnings of the workman. Where such earnings are less than £1, then by multiplying £1, where such earnings exceed £2 then by multiplying £2, by the number of weeks in the period between the death of the workman and the date when the child will attain the age of fifteen, fractions of a week being disregarded.

(ii.) If the widow or other member of the workman's family and such child or children as aforesaid, or any of them, were partially dependent on the workman's earnings, the children's allowance is such proportion of the sum which would have been payable under the foregoing rule if all such persons had been wholly dependent as may be agreed upon. In default of agreement such sum as may, taking into consideration the amount of the lump sum, be determined by arbitration under the Act to be reasonable.

(iii.) No deduction is made from the children's allowance in respect of the amount of any weekly payments which may have been made to the workman under the Act in respect of the same injury, but if such weekly payments have been redeemed the amount paid in redemption thereof, if and so far as it exceeds the lump sum payable, is deducted from the amount of the children's allowance as ascertained under the foregoing rules.¹

¹ Workmen's Compensation Act, 1925, s. 8.

Amount in Cases of Total and Partial Incapacity

Compensation where total or partial incapacity for work results from the injury is a weekly payment during the incapacity.

In fixing the amount of the weekly payment, regard is had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, but the weekly payment must in no case exceed thirty shillings.

Rules in respect of Total Incapacity

The rules for calculating the weekly payment in the case of total incapacity are :

(i.) The weekly payment is subject to rule (ii.), a sum not exceeding fifty per cent. of the workman's average weekly earnings during the previous twelve months, if he has been so long employed by the same employer, but if not, then for any less period during which he has been in the employment of the same employer.

(ii.) Where the maximum weekly payment calculated according to rule (i.) is less than twenty-five shillings, the workman is entitled during such total incapacity to a weekly addition equal to one-half of the difference between such maximum weekly payment and the sum of twenty-five shillings or his average weekly earnings, whichever is the less, and such addition is to be treated as if it were part of the weekly payment.

Rules¹ in Respect of Partial Incapacity

The rules for calculating the weekly payment in the case of partial incapacity are :

(i.) If the maximum weekly payment would, had the incapacity been total incapacity, have amounted to twenty-five shillings a week or upwards, the weekly payment in case of partial incapacity is one-half the

¹ For examples see p. 191 *infra*.

difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident.

(ii.) If the maximum weekly payment would, had the incapacity been total incapacity, have amounted with such addition, if any, as is provided by rule (ii.) in the case of total incapacity, to less than twenty-five shillings, the weekly payment in case of partial incapacity is a sum bearing the same proportion to the said difference as the said maximum weekly payment with such addition as aforesaid bears to the amount of the average weekly earnings of the workman before the accident.

If a workman who has so far recovered from the injury as to be fit for employment of a certain kind proves to the satisfaction of the judge of the county court that he has taken all reasonable steps to obtain, and has failed to obtain, such employment, and that his failure to obtain such employment is a consequence, wholly or mainly, of the injury, the judge must order that his incapacity shall continue to be treated as total incapacity for such period, and subject to such conditions, as may be provided by the order, without prejudice however to the right of review conferred by the Act.¹

Every such order must, however, be made subject to the condition that it shall cease to be in force if the workman receives unemployment benefit.²

Rules for Determining Earnings

For the purposes of the provisions relating to "earnings" and "average weekly earnings" of a workman, the following rules are to be observed:

(i.) Average weekly earnings are to be computed in such manner as is best calculated to give the rate per

¹ See p. 163 *infra*.

² Workmen's Compensation Act, 1925, s. 9.

week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer. If there is no person so employed, then by a person in the same grade employed in the same class of employment and in the same district.

(ii.) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings are computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(iii.) Employment by the same employer is taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.¹

(iv.) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid is not reckoned as part of the earnings.

(v.) Upon request of the workman to the employer liable to pay compensation, that employer must

¹ Stoppages of work due to holidays or slackness of work do not constitute "unavoidable cause." See *Anslow v. Cannock Chase Colliery Co.* 2 B.W.C.C. 365.

furnish in writing a list of the earnings of that workman upon which the amount of the average weekly earnings may be calculated for the purpose of determining the amount of any weekly payment under the Act.¹

Reviews of Weekly Payments

Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum provided in s. 9,² and the amount of payment is, in default of agreement, settled by arbitration under the Act.

Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident and before the workman attains the age of twenty-one years, the amount of the weekly payment may be increased to such an amount as would have been awarded if the workman had at the time of accident been earning the weekly sum which he would probably have been earning at the date of the review if he had remained uninjured.

Where the review takes place more than six months after the accident, and it is claimed and proved that, had the workman remained uninjured and continued in the same class of employment as that in which he was employed at the date of the accident, his average weekly earnings during the twelve months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than twenty per cent. than his average weekly earnings during the twelve months previous to the accident (or if the weekly payment has been previously varied on a review during the twelve months previous to that review or the last of such reviews), the weekly payment is to be varied

¹ Workmen's Compensation Act, 1925, s. 20.

² See *supra*, p. 161.

so as to make it such as it would have been if the rates of remuneration obtaining during the twelve months previous to the review had obtained during the twelve months previous to the accident.¹

Limitation of Power of Employer to end or diminish Weekly Payments

An employer is not entitled otherwise than in pursuance of an agreement or arbitration to end or diminish a weekly payment except in the following cases :

(1) Where a workman in receipt of a weekly payment in respect of total incapacity has actually returned to work.

(2) Where the weekly earnings of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased.

(3) Where the medical practitioner who has examined the workman under s. 18 of the Act has certified that the workman has wholly or partially recovered, or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which must set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer at the expiration of ten clear days from the date of the service of the notice to end the weekly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman.

If, however, before the expiration of the said ten clear days the workman sends to the employer the report of a duly qualified medical practitioner (which report must set out the grounds of his opinion) disagreeing with the certificate so served by the employer, the weekly payment

¹ Workmen's Compensation Act, 1925, s. 11.

can not be ended or diminished, except in accordance with such report, or if and so far as the employer disputes such report, except in accordance with the certificate given by the medical referee in pursuance of s. 19 of the Act.¹

Where an application has been made in pursuance of the said s. 19 to refer the dispute to a medical referee, it is lawful for the employer, pending the settlement of the dispute, to pay into court :

(a) where the notice was a notice to end the weekly payment, the whole of each weekly payment becoming payable in the meantime ;

(b) where the notice was a notice to diminish the weekly payment, so much of each weekly payment so payable as is in dispute ;

and the sums so paid into court are, on the settlement of the dispute, to be paid to the employer or to the workman according to the effect of the certificate of the medical referee, or, if the effect of that certificate is disputed, as in default of agreement may be determined by the registrar or, on appeal, the judge.²

Redemption of Weekly Payments

Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by

¹ See *infra*, p. 170. ² Workmen's Compensation Act, 1925, s. 12.

arbitration under the Act. Such lump sum may be ordered by the committee or arbitrator or judge of the county court¹ to be invested or otherwise applied for the benefit of the person entitled thereto.

It is, however, provided that :

(a) Nothing is to prevent agreements being made for the redemption of a weekly payment by a lump sum ; and

(b) the provisions fixing the amount of the lump sum for which a weekly payment may be redeemed where the incapacity is permanent, are not to apply in the case where the injured workman is at the date of the application under twenty-one years of age. Where, in the case of an injured workman under the age of twenty-one, the lump sum for which the weekly payment may be redeemed is determined by arbitration, the right which if the redemption did not take place the workman would have to have the weekly payment increased on a review under sub-section (2) of s. 11 of the Act is to be taken into account.*

Conditions of Compensation : Requirements as to Notice for Compensation

Notice of the accident must be given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured. The want of, defect, or inaccuracy in such notice is, however, not to be a bar to the maintenance of proceedings for compensation if the employer had knowledge from other sources, or if he was not or would not be prejudiced by such want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.*

¹ See Schedule II. of the Act.

* Workmen's Compensation Act, 1925, s. 13. * *Ibid.*, s. 14 (1).

Notice in respect of an injury may be given either in writing or orally : (i.) to the employer, or (ii.) to any foreman or other official under whose supervision the workman is employed, or (iii.) to any person designated for the purpose by the employer.¹

If the notice is in writing, it may be given : (i.) by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person to whom it is to be given,² or (ii.) if the employer is a body of persons, corporate or unincorporate, by delivering it or by sending it by registered post and addressed to the employer at the office or one of the offices of that body.³

The notice, if in writing, must give the name and address of the person injured, and state the cause of the injury and the date at which the accident happened.⁴

Requirements as to Claim for Compensation

A claim for compensation must be made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months of death,⁵ but the failure to make a claim within the specified time is not to be a bar to the maintenance of proceedings if the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.⁶ The claim need not be in writing.⁷

The above requirements as to notice and claim must be published in a summarised form and posted up in some conspicuous place at or near every mine, quarry, factory, or workshop, and on every ship, and in the event of such summary becoming effaced, obliterated, or destroyed, it must be renewed with all reasonable

¹ Workmen's Compensation Act, 1925, 14 s. (1) (a). ² *Ibid.*, s. 1 (3).

³ *Ibid.*, s. 1 (4).

⁴ *Ibid.*, s. 1 (4).

⁵ *Ibid.*, s. 1 (1).

⁶ *Ibid.*, s. 1 (1) (b).

⁷ *Lowe v. Myers* [1906], 2 K.B. 265.

dispatch. Penalties are to be imposed for non-compliance with these provisions.

In order to facilitate the giving of notice, a book in the prescribed form must be kept at every mine, quarry, or workshop, in which particulars of any accident may be entered by the injured workman or some other person acting on his behalf, and an entry in such a book, if made as soon as practicable after the accident, will constitute sufficient notice.¹

The onus of proving that the employer has not been prejudiced lies, in the first instance, on the workman, but the whole question is one of fact for the arbitrator.² If the want, defect, or inaccuracy of notice be due to mistake, absence from the United Kingdom, or other reasonable cause, the employer cannot raise the defence of prejudice. Mistake is a question of fact.³ Nor can the want, defect, or inaccuracy in the notice of an accident be a bar to the maintenance of proceedings for compensation if the employer is proved to have had knowledge of the accident from any source at or about the time of the accident. Nor can proceedings be barred where the employer is the owner of a mine or quarry or the occupier of a factory or workshop in the following cases :

(a) If such summary as aforesaid has not been posted up in the factory or workshop.

(b) If the accident has been reported by or on behalf of the employer to an inspector of mines or factories.

(c) If the accident has been entered in any register kept at the mine, quarry, factory, or workshop.

(d) If the injury has been treated in the ambulance room at the mine, quarry, factory, or workshop.⁴

¹ Workmen's Compensation Act, 1925, s. 15 (1).

² *Lacey v. Mowlem* (1914) 7 B.W.C.C. 135.

³ *Selkirk v. National Radiator Co.* (1916) 10 B.W.C.C. 107.

⁴ Workmen's Compensation Act, 1925, s. 15 (2).

Conditions as to Residence

A workman receiving a weekly payment must reside in the United Kingdom, the Channel Islands, or the Isle of Man, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.¹

Medical Examinations

Any workman who has given notice of an accident, or who is receiving weekly payment under the Act, must, if so required by the employer, submit to a medical examination by a duly qualified medical practitioner, provided and paid by the employer. If he refuses to submit himself for such examination, or in any way obstructs the same, his right to compensation and to take proceedings is suspended, and if he is already in receipt of weekly payments, such payments will be suspended until such examination takes place.² This liability will also be incurred by a workman refusing to be examined by a medical referee.³

A workman cannot be so required to submit himself for examination by a medical practitioner otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.⁴

Following such medical examination, in the event of no agreement as to the workman's condition or fitness for employment, the registrar of a county court may, on application being made to the court by both parties, or, subject to an appeal to the judge, by one of the parties, refer the matter to a medical referee. In certain cases the matter may be settled by arbitration instead of being referred to the medical referee.⁵

¹ Workmen's Compensation Act, 1925, s. 16.

² *Ibid.*, see s. 19 (5).

⁴ *Ibid.*, s. 19 (1).

³ *Ibid.*, ss. 17-18.

⁵ *Ibid.*, s. 19 (3).

The certificate of the medical referee in such a case is to be final and conclusive as to the matter certified.¹

Determining Compensation and Procedure for Settling Questions

Any question which arises under the Act as to liability to pay compensation, if not settled by agreement, is to be settled by the arbitration of a representative committee, or by an arbitrator, or by a judge of county courts, in accordance with rules contained in the First Schedule to the Act.

Questions as to who is a dependant are also, in default of agreement, to be settled by arbitration.

Power to Vary Awards

Any order or award as to compensation may, on application being made, be varied by a county court judge, where there has been neglect of children on the part of a widow or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause.²

Registration of Awards, etc.

Where the amount of compensation has been ascertained, or any weekly payment varied, or any other matter decided under the Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof must be sent to the registrar of a county court, to be recorded by him in a special register, provided that :

(i.) Seven days' notice must be given to the parties interested.

(ii.) Where the workman has returned to work and is earning the same wages as he did before the accident, and he objects to the recording of such agreement, the

¹ Workmen's Compensation Act, 1925, s. 21.

² *Ibid.*, s. 22.

memorandum is only to be recorded, if at all, on such terms as the county court judge may think just.¹

The county court judge may at any time rectify the register.

The registrar may require to be supplied with any information he considers necessary, and may refuse to record the memorandum if the parties fail to comply. The same rule applies where the prospects of the workman recovering are doubtful and cannot be approximately determined.²

Agreements for the payment of a lump sum must disclose the amount (if any) paid by the employer to the workman's solicitor or dependants as costs. If the registrar considers they are excessive, he may direct that the bill of costs be submitted to him for taxation in accordance with rules of the court.³

Objections to the recording of any agreement for the payment of a lump sum may be made by the workman's approved society.⁴

Composition Agreements

Composition agreements, whereby in consideration of the payment of a lump sum a claim for compensation purports to be precluded, must be registered in like manner and subject to like conditions, as in the case of an agreement for the redemption of a weekly payment by a lump sum.⁵

Registration of Agreements

The following agreements must be registered :

(i.) Agreements for the redemption of a weekly payment by a lump sum.

¹ Workmen's Compensation Act, 1925, s. 23 (1).

² *Ibid.*, s. 23 (3) (4).

³ *Ibid.*, s. 23 (5).

⁴ *Ibid.*, s. 23 (6).

⁵ *Ibid.*, s. 24.

(ii.) Agreements as to the amount of compensation to be paid to a person under a legal disability or to dependants.

(iii.) Composition agreements.

If the above agreements are not registered, the employer will not be exempt from liability to pay compensation unless he proves that the failure to register was not due to any neglect or default on his part.¹

A registrar may refuse to register such agreements if he considers they ought not to be registered by reason of the inadequacy of the sum or amount to be paid or by reason of the agreement having been obtained by fraud or undue influence or other improper means.²

Payments into Court

The compensation payable in the case of death must, unless otherwise ordered, be paid into the county court, or, if the workman leave no dependants, to his legal personal representative, or, if he has no such representative, then to the person to whom the expenses of medical attendance and burial are due.³

In cases of weekly payment payable to persons under legal disability, such payments also may be ordered to be paid into court in accordance with the rules contained in the Second Schedule to the Act.⁴

Representative Committees

Powers conferred by the Act on county courts or judges of county courts may be conferred on representative committees⁵ by the Secretary of the State.⁶

¹ Workmen's Compensation Act, 1925, s. 25. ² *Ibid.*, s. 25 (4).

³ *Ibid.*, s. 26 (1) (3).

⁴ *Ibid.*, s. 26 (2).

⁵ Such a committee, representing employers and workmen is operating at the present time in the Durham coalfield.

⁶ 1925 Act, s. 28.

Alternative Remedies : Remedy against Employer

When the injury was caused by the personal negligence or wilful act of the employer, or his servant or agent, nothing in the Act is to affect the liability of the employer, and the workman may either claim compensation under the Act or take proceedings independently of the Act. The employer cannot, however, be held liable in damages both under and independently of the Act.¹

If within the time limited in the Act for taking proceedings an action is brought to recover damages independently of the Act for injury caused by any accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the Act, the action is to be dismissed. The court in which the action is tried, or if the determination is the determination on appeal (by either party) by an appellate tribunal, that tribunal must, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs, which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under the Act. In such an event, the court must give a certificate of the compensation it has awarded and the direction it has given as to the deduction for costs, and such certificate is to have the force and effect of an award under the Act.

An appellate tribunal may, however, instead of itself assessing such compensation, remit the case to the county court for the assessment of the compensation, and in such case may order the county court to deduct from the amount of compensation assessed by it all or part of such costs as aforesaid.²

It should be noted that the application for compensation after an unsuccessful action must be made then and

¹ Workmen's Compensation Act, 1925, s. 29 (1).

² *Ibid.*, s. 29 (2).

(c) That a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme.¹

No scheme is to be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.²

Schemes may be certified for five years, and are renewable provided certain conditions are observed.³ Power is also given to the Registrar to revoke any scheme in certain circumstances, e.g. if complaint is made to the Registrar by or on behalf of the workmen of any employer (i.) that the benefits conferred by the scheme no longer conform to the above conditions, or (ii.) that the provisions of such scheme are being violated, or (iii.) that the scheme is not being fairly administered.⁴ The Registrar also has power to amend the scales of compensation provided in such schemes in certain cases.⁵

Application to Special Classes of Persons : Employees and the Crown

The Act applies to workmen⁶ employed by or under the Crown to whom the Act would apply if they were employed by a private person.⁷

Rescue Workers in Mines

Workmen who are injured whilst being trained as members of a rescue brigade with the consent of their employers are to be deemed to have been injured by an

¹ Workmen's Compensation Act, 1925, s. 31 (1).

² *Ibid.*, s. 31 (3). ³ *Ibid.*, s. 31 (2) (4). ⁴ *Ibid.*, s. 31 (5).

⁵ See s. 6 of the Workmen's Compensation Act, 1923.

⁶ But not to soldiers, sailors, or airmen in the service of the Crown.

⁷ Workmen's Compensation Act, 1925, s. 33.

accident arising out of, and in the course of, their employment in the mine.¹ Moreover, any workman actually engaged in rescue or ambulance work, whilst so engaged, is, for the purposes of the Act, to be deemed to be employed by the owner of the mine.²

Employment on Ships

The Act applies to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of the Act,³ and are members of any ship registered in the United Kingdom or of any British ship or vessel of which the owner resides, or has his principal place of business, in the United Kingdom. The Act also applies to pilots to whom the Pilotage Act, 1913, applies, and to any person not being a master, seaman, or apprentice to the sea service or the sea-fishing service if he is employed on a ship for the purposes of the ship, or of any passengers or cargo or mails carried by the ship, e.g. a purser.

On the other hand, members of the crew of a fishing vessel who are remunerated wholly or mainly by shares in the profits or the gross earnings of the working of such vessel are not entitled to claim compensation under the Act, except in such cases and subject to such modifications as the Secretary of State may by order provide.⁴

The following special provisions apply in the case of persons employed on ships⁵:

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and

¹ Workmen's Compensation Act, 1925, s. 34 (1).

² *Ibid.*, s. 34 (2). ³ For definition of workmen see p. 158 *supra*.

⁴ Workmen's Compensation Act, 1925, s. 35 (2).

⁵ *Ibid.*, s. 35 (1).

the incapacity commenced on board the ship it is not to be necessary to give any notice of the accident.

(b) The provisions of sub-section (1) of s. 13 of the Act (other than those relating to the institution of proceedings by an inspector of mines or factories) apply to ships and the masters thereof in like manner as it applies to factories and the occupiers thereof.

(c) In the case of the death of the master, seaman, or apprentice, the claim for compensation must be made within six months after news of the death has been received by the claimant.

(d) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken must be transmitted by the person by whom they are taken to the Board of Trade. All such depositions or certified copies thereof are in any proceedings for enforcing the claim admissible in evidence as provided by ss. 691 and 695 of the Merchant Shipping Act, 1894.

(e) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation is payable, if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial.

(f) The weekly payment is not payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice.

(g) Any sum payable by way of compensation by the

owner of a ship under the Act must be paid in full, notwithstanding anything in s. 503 of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section is to apply to the amount recoverable by way of indemnity under s. 30 of the Act (relating to remedies both against employer and stranger) as if the indemnity were damages for loss of life or personal injury.

(h) Sub-sections (2) and (3) of s. 174 of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation are in such a case maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

A fisherman is not excluded merely because he is an owner of one of the sixty-four shares in the vessel,¹ or if he receives a bonus of 6s. a day, to be paid whenever the catch for seven days amounts in value to £100,² but he is excluded if any part of his remuneration consists of shares³ or if a crew share among themselves the proceedings of the sale of certain parts of the fish not required by the owner.⁴ Nor may a sailor who contracts an industrial disease whilst at sea claim compensation under the Act.⁵

¹ *Sherpe v. Carswell* (1910) 3 B.W.C.C. 552.

² *Duck v. North Sea S.F. Co.* (1915) 9 B.W.C.C. 83.

³ *Admiral Fishing Co. v. Robinson* (1910) 3 B.W.C.C. 247.

⁴ *Buchan v. Scottish Steam Herring Fishery Co.* (1917) 10 B.W.C.C.

726.

⁵ *Curtis v. Black & Co.* [1909] 2 K.B. 529.

Detention of Ships

If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, or any corresponding enactment for the time being in force in Northern Ireland, and at any time that ship is found in any port or river of England or Northern Ireland, or within three miles of the coast thereof, a judge of any court of record¹ in England or Northern Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in Great Britain or Northern Ireland, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon ; and any officer of customs or other officer to whom the order is directed must detain the ship accordingly.

In any legal proceeding to recover such compensation, the person giving security is to be made defendant, and the production of the order of the judge, made in relation to the security, is to be conclusive evidence of the liability of the defendant to the proceeding.

Where a complaint is made to the Secretary of State that before an application can be made under this section the ship in respect of which the application is to be made will have departed from the limits within which she can be arrested, the ship can, if the Secretary of State so directs, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer is

¹ e.g. a county court judge.

not to be liable for any costs or damages in respect of the detention, if made in accordance with the directions of the Secretary of State.

S. 692 of the Merchant Shipping Act, 1894, is to apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it is for the purposes of this section to be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

Where a ship has been demised to charterers, the provisions of this section are to apply to claims against the charterers of the ship as they apply to claims against the owners of a ship with the substitution of charterers for owners :

Provided that no ship is to be detained on a claim against the charterers of the ship after the expiration of the term for which the ship is demised to them.

The foregoing provisions of the section extend to Northern Ireland.¹

Without prejudice to any other means of enforcing claims in Scotland, this section is, with the substitution of references to the sheriff for references to a judge of any court of record in England, to apply to a ship found in any port or river of Scotland, or within three miles of the coast thereof, in like manner as it applies to a ship found in any port or river of England or within three miles of the coast thereof.²

The object of the above section is to provide the injured workman with a remedy in cases where, but for such a provision, he would be without a remedy. The section enables him to detain the ship until someone comes forward, and pays the compensation or gives security, upon which the ship may be released.

¹ Except where specially mentioned, the Act does not apply to Northern Ireland (see s. 50).

² Workmen's Compensation Act, 1925, s. 39.

Prohibition against charging or assigning Weekly Payments

A weekly payment payable under the Act or any scheme certified under the Act, or a sum paid by way of redemption thereof, is not capable of being assigned, charged, or attached, and does not pass to any other person by operation of law, nor can any claim be set off against the same.¹

Repayment of Poor Relief

Where an authority has granted outdoor relief to a person pending the settlement of his claim to compensation or any scheme certified thereunder and either :

(a) such relief would not have been granted had the person then received or been in receipt of compensation ; or

(b) such relief is in excess of the amount which would have been granted had the person then received or been in receipt of such compensation ;

the authority may give notice of the relief so provided to the person liable to pay the compensation. If such notice is given the person so liable must on demand, and on being furnished with a certificate by the authority of the amount of the relief so provided or of the amount of such excess, as the case may be, repay to the authority, up to the amount which he is liable to pay as compensation, less such part (if any) of that amount as he has already duly paid at the time of receiving the notice aforesaid, the amount of the relief or of the excess certified as aforesaid. In any such case the receipt of the authority is, up to the amount of the repayment, a full

¹ Workmen's Compensation Act, 1925, s. 40.

and valid discharge to that person in respect of the compensation payable by him to the person relieved :

If, however, the person so liable to pay compensation gives to the authority by which such notice as aforesaid is given notice that he intends to pay, or that he has paid, compensation, he is not to be under any obligation to make any repayment in respect of any relief provided after the date of the payment of the compensation or after the time at which the notice so given is received by the authority, whichever is the later.¹

Returns as to Compensation

Every employer in any industry to which the Secretary of State may direct that this section is to apply must, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under the Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct. In default of complying with this section the employer is liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding £5.²

Aircraft Employees

The Act may be applied by the Secretary of State to such persons, being workmen within the meaning of the Act, who are employed as pilot, commander-navigator, or member of the crew of any aircraft, when outside Great Britain.

The aircraft to which this section applies are aircraft registered in the United Kingdom, the owner of which resides or has his principal place of business in Great Britain.³

¹ Workmen's Compensation Act, 1925, s. 42. ² *Ibid.*, s. 42.

³ *Ibid.*, s. 36.

Appointment of Medical Referees

Medical referees may be appointed for the purposes of the Act, but where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he must not act as a medical referee in that case.¹

Industrial Diseases

Where :

- (i.) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed ;
- or
- (ii.) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease ; or
- (iii.) the death of a workman is caused by any such disease ;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants are entitled to compensation as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications :

- (a) The disablement or suspension is to be treated as the happening of the accident ;

¹ Workmen's Compensation Act, 1925, s. 38.

(b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation is not payable ;

(c) The compensation is recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due :

It should, however, be observed that :

(i.) The workman or his dependants if so required must furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess. If such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment will not be liable to pay compensation ; and

(ii.) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer will be the employer from whom the compensation is to be recoverable ; and

(iii.) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due are to be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under the Act for

settling the amount of the compensation, or, if the amount of compensation is not in dispute, as may be determined by arbitration under the Act.

(d) The amount of the compensation is to be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable ;

(e) The employer to whom notice of the death, disablement or suspension is to be given is the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter must in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision is to be final. The medical referee when deciding the matter must also certify as to the condition of the workman at the time when he is examined by him, and such certificate by the medical referee is conclusive.

The date of disablement is such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given.

Where, however, the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement is such date as the medical referee may determine, and where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt

of a weekly payment on account of disablement, it is to be the date of death.

The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

Nothing in this section is to affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of the Act.¹

Supplemental Provisions as to Industrial Diseases

If the workman at or immediately before the date of such disablement or suspension as aforesaid, was employed in any process mentioned in the second column of the Third Schedule to the Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, is to be deemed to have been due to the nature of that employment unless the employer proves the contrary.

Where a workman claims to be suffering from and disabled by a disease to which the foregoing provisions of this part of the Act apply, the employer may agree with the workman that he is liable to pay compensation without requiring the workman to obtain the certificate of the certifying surgeon mentioned in those provisions, and thereupon the workman is to be entitled to compensation as for injury by accident from the date of the agreement or from such other date as may be agreed.

Any such agreement may be recorded in the manner

¹ Workmen's Compensation Act, 1925, s. 43.

provided by s. 23 of the Act, and is enforceable against the employer in like manner and subject to the same provisions as an agreement to pay compensation in case of an injury by accident.

In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose has the powers and duties of a certifying surgeon under the foregoing provisions of this part of the Act, and those provisions are to be construed accordingly.

The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under the foregoing provisions.¹

Mutual Insurance of Employers engaged in Industries

Where, after inquiry held on the application of any employers or workmen engaged in any industry to which the foregoing provisions² apply, it appears that a mutual trade insurance company or society for insuring against the risks under those provisions has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order.

Where such a company or society has been established but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this section treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

¹ Workmen's Compensation Act, 1925, s. 44.

² i.e. those relating to industrial diseases.

A Provisional Order made under this section is of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.¹

Power by Scheme to apply Act to Workmen suffering from Silicosis

The Secretary of State may by scheme provide for the payment of compensation by the employers of workmen in any specified industry or process or group of industries or processes involving exposure to silica dust

(a) who are certified in such manner as may be prescribed by the scheme to have suffered death or total disablement from the disease known as fibroid phthisis or silicosis of the lungs (in this section referred to as silicosis) or from that disease accompanied by tuberculosis ; or

(b) who, though not totally disabled, are found on medical examination to be suffering from silicosis, or from silicosis accompanied by tuberculosis, to such a degree as to make it dangerous to continue work in the industry or process, and are for that reason suspended from employment.

The scale of compensation fixed by the scheme in the case of death or total disablement due to silicosis or silicosis accompanied by tuberculosis is that prescribed by the Act and in any other case is such as may be prescribed by the scheme.

Provision may be made by the scheme

¹ Workmen's Compensation Act, 1925, s. 45.

(a) for the establishment of a general compensation fund, to be administered either through a mutual trade insurance company or society of employers, or in such other manner as may be provided by the scheme ;

(b) for requiring employers to subscribe to the fund, and for the recovery of such subscriptions, and for the payment and recovery out of the fund of all compensation under the scheme, and of any expenses arising under the scheme which are directed by the scheme to be so paid, subject to such exceptions in special cases as may be made by the scheme ;

(c) for the settlement of claims and other matters arising under the scheme by committees representative of both employers and workmen, with an independent chairman, and for the procedure to be adopted before such committees ;

(d) for the appointment and remuneration of medical officers, medical boards and advisory medical bodies, and for their duties and powers in connection with the scheme ;

(e) for requiring workmen to whom the scheme applies (i.) to submit themselves to such periodical medical examination, and (ii.) to furnish such information with respect to their previous employment in any industry specified in the scheme, as involving exposure to silica dust, as may be prescribed by the scheme, and for making the right of the workmen to compensation conditional on compliance with such requirements, and for the suspension from employment of workmen who are found at any time to be suffering from silicosis or tuberculosis, or silicosis accompanied by tuberculosis, or who, when first medically examined in pursuance of the scheme, are found unsuitable for work in the industry or process by reason of their failure to satisfy such requirements with respect to physique as may be prescribed by the scheme ; and

(f) for the application with the necessary modifications of any of the provisions of the Act, or of any enactment relating to compensation thereunder, and for defining the industries or processes to which the scheme applies, and generally for such further or supplemental matters, including provisions as to the determination of disputes arising between employers and the authority administering the fund, as appear necessary for giving full effect to the scheme.

Any scheme made under this section may be extended or varied by any subsequent scheme made in the like manner, and shall have effect as if enacted in the Act, but any scheme made under this section must be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House sits next after any such scheme is laid before it praying that the scheme may be annulled, His Majesty in Council may annul the scheme, and it will thenceforward be void, but without prejudice to the validity of anything done thereunder.

Section one of the Rules Publication Act, 1893, do not apply to any scheme made under this section.¹

Accidents prior to December 22, 1925

Accidents which occurred prior to January 1, 1923, and January 1, 1924, are subject to the provisions of the Workmen's Compensation Acts, 1906² and 1923 respectively.³

Examples illustrating the Application of the Rules⁴ for calculating Weekly Payments in Cases of Partial Disablement.

Rule 1

(1) An injured workman earned £4 per week at the time of his accident and £2 per week after his accident.

¹ Workmen's Compensation Act, 1925, s. 47.

² i.e. ss. 2-10, and 15 thereof.

³ Workmen's Compensation Act, 1925, s. 50.

⁴ See p. 160, *supra*.

He would, if he had been totally incapacitated, have been entitled to 50 per cent. of his pre-accident wages, viz. £4, i.e. £2 per week. As this sum exceeds 25s. the compensation payable is calculated under the first rule dealing with partial incapacity. If he is only partially incapacitated he is only entitled to half the difference between the amount he earned before the accident, i.e. £4, and what he is earning after the accident, i.e. £2. The difference being £2, he is entitled to half that sum, which is £1 per week compensation.

Rule 2

(2) An injured workman earned 40s. per week at the time of his accident and 20s. per week after his accident. If he had been totally incapacitated he would have been entitled to 50 per cent. of his pre-accident wages, viz. 20s., which is 5s. less than the 25s. referred to in the rule. Under the second rule, operating in the case of total incapacity,¹ he becomes entitled to one-half of 5s., i.e. the difference between such maximum weekly payment of 20s. and the sum of 25s., making a total of 22s. 6d. per week. As this sum is less than 25s., in the case of partial incapacity the compensation payable is calculated under the second rule dealing with partial incapacity, and is such a sum bearing the same proportion to the said difference between the average amount earned before and subsequent to the accident, viz. 20s., as the said maximum weekly payment of 20s.—with the additional 2s. 6d. making a total of 22s. 6d., which would have been payable as aforesaid if the workman had been totally incapacitated—bears to the amount of his pre-accident earnings, viz. 40s.

$$\frac{22\frac{1}{2}}{40} \text{ of } 20s. = 11s. 3d.$$

He is therefore entitled to 11s. 3d. per week compensation.

¹ See p. 160, *supra*.

APPENDIX

A

STATUTES

The Trade Union Act, 1871.

(34 & 35 Vict., c. 31.)

1. This Act may be cited as "The Trade Union Act, 1871." Short title.

Criminal Provisions.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Trade union
not criminal.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Trade union
not unlawful
for civil pur-
poses.

4. Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

Trade union
contracts
when not
enforceable.

1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :
2. Any agreement for the payment by any person of any subscription or penalty to a trade union :
3. Any agreement for the application of the funds of a trade union,—
 - (a) To provide benefits to members ; or,
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or
 - (c) To discharge any fine imposed upon any person by sentence of a court of justice ; or,
4. Any agreement made between one trade union and another ; or,
5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following Acts, that is to say,

- (1) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same ;
- (2) The Industrial and Provident Societies Act, 1867, and any Act amending the same ; and
- (3) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Registered Trade Unions.

6. Any seven or more members of a trade union may, by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom ; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of a trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever,

Provisions of
18 & 19 Vict.,
c. 68,
20 & 21 Vict.,
c. 117,
25 & 26 Vict.,
c. 89, etc.,
not to apply to
trade
unions.

Registry of
trade unions.

Buildings for
trade unions
may be
purchased or
leased.

Property of
the trade
unions vested
in trustees.

save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees ; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

8. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any court of law or equity touching or concerning the property, right, or claim to property of the trade union ; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

Actions, etc.,
by or against
trustees, etc.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Limitation of
responsibility
of trustees.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance

Treasurers,
etc., to
account.

then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed ; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody ; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union ; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

Punishment
for with-
holding
money, etc.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate¹ upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court, to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding

¹ See section 5 of the Act of 1876 for amendment of this part of the section.

twenty shillings ; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months : Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party ; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Registry of Trade Union.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect :—

*Regulations
for registry.*

- (1) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act :
- (2) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules :
- (3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly-resembling such name as to be likely to deceive the members or the public :
- (4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :
- (5) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of

this Act with respect to registry have been complied with :

- (6) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

Rules of registered trade unions.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect :

- (1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act :
- (2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

Registered office of trade unions.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him ; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

Annual returns to be prepared as registrar may direct.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union ; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require ; and every member of, and depositor in, any such trade union shall be entitled to receive on application to the treasurer or secretary of that trade

union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act. Registrars.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor. Circulating false copies of rules, etc., a misdemeanor.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts. Summary proceedings for offences, penalties, etc.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows:

1. The "Court of Summary Jurisdiction," when hearing

and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A) In England,

- (1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :
- (2) In the city of London, of the Lord Mayor or any alderman of the said city :
- (3) In any other place, of two or more justices of the peace sitting in petty sessions.

(B) In Ireland,

- (1) In the police district of Dublin metropolis, of a divisional justice :
- (2) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court under the provisions of the Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

Appeal to
quarter sessions.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom subject to the conditions and regulations following :

- (1) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made :

- (2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :
- (3) The appellant shall immediately after such notice enter into a recognisance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court :
- (4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognisance as aforesaid, release him from custody :
- (5) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the High Court of Justiciary, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Appeal in
Scotland as
prescribed by
30 Geo. II
c. 43.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and

Lord Treasurer's Remembrancer on behalf of the Crown.

Interested person not to act as a member of a court of appeal.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

Definitions. As to the term "Summary Jurisdiction Acts":

23. In this Act—

The term "Summary Jurisdiction Acts" means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanor" means a crime and offence.

As to "trade union." Definition of "trade union" amended by s. 16, Trade Union Act, 1876.

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall not affect—

1. Any agreement between partners as to their own business;
2. Any agreement between an employer and those employed by him as to such employment;
3. Any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade, or handicraft.

24. [Repealed by Statute Law Revision Act, 1883.]

APPENDIX

SCHEDULES.

FIRST SCHEDULE.

*Of Matters to be provided for by the Rules of Trade Unions
Registered under this Act.*

1. The name of the trade union and place of meeting for the business of the trade union. See 18 & 19
Vict., c. 63,
s. 25.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE

Maximum Fees.¹

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

¹ See Regulation 24, *infra*, p. 233.

The Conspiracy and Protection of Property Act, 1875.

(38 & 39 Vict., c. 86.)

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.
[13th August, 1875].

Short title.

1. This Act may be cited as the Conspiracy, and Protection of Property Act, 1875.

2. [Repealed by Statute Law Revision Act, 1893.]

Conspiracy, and Protection of Property.

Amendment
of law as to
conspiracy in
trade disputes.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Breach of contract by persons employed in supply of gas or water.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either

Breach of contract involving injury to persons or property.

to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Penalty for neglect by master to provide food, clothing, etc., for servant or apprentice.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty for intimidation or annoyance by violence or otherwise.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates¹ such other person or his wife or children, or injures his property ; or,
2. Persistently follows such other person about from place to place ; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place ; or,
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

[Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section. (Repealed by section 2, Trade Disputes Act, 1906.)]

¹ See s. 3 of the Trade Disputes and Trade Unions Act, 1927—

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act. Reduction of penalties.

Legal Proceedings.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly. Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act. Proceedings before court of summary jurisdiction

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses. Regulations as to evidence.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1) The appeal shall be made to some court of general or quarter sessions for the county, Appeal to quarter sessions.

[The rest of the section is repealed, as regards England, by 47 & 48 Vict., c. 43, s. 4.]

OU

Definitions.

General
definitions :

" The Summary
Jurisdiction
Act."

" Court of
summary
jurisdiction."

13. In this Act,—

The expression " the Summary Jurisdiction Act," means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled " An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same ; and

The expression " court of summary jurisdiction " means—

- (1) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room ; and
- (2) As respects any police court division in the Metropolitan police district, any Metropolitan police magistrate sitting at the police court for that division ; and
- (3) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf ; and
- (4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act : Provided that, as respects any case within the cognisance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any Metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Definitions of
" municipal
authority "
and " public
company."

14. The expression " municipal authority " in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled " An Act to provide for the Regulation of Municipal

Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

"Maliciously" in this Act construed as in Malicious Injuries to Property Act.

Saving Clause.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

Saving as to sea service.

17. [The greater part of this section is repealed by the Statute Law Revision Act, 1883. Only the first proviso remains in force.]

- (1) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise.

Application of Act to Scotland.

18. This Act shall extend to Scotland, with the modifications following; that is to say,

Application to Scotland.

Definitions.

- (1) The expression "municipal authority" means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867 :
- (2) [Repealed by the Statute Law Revision (No. 2) Act, 1893.]
- (3) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

Recovery of penalties, etc., in Scotland.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties and making of orders under this Act :

- (1) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court :
- (2) The proceedings may be on indictment in the Court of Justiciary or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864 :
- (3) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K of the Summary Procedure Act, 1864 :
- (4) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

Appeal in Scotland as prescribed by 20 Geo. II, c. 48.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the High Court of Justiciary, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the

same may be altered or amended by any Acts of Parliament, for the time being in force.

Application of Act to Ireland.

21. This Act shall extend to Ireland,¹ with the modifications following: that is to say, Application to Ireland.

[Two paragraphs are repealed by the Statute Law Revision (No. 2) Act, 1893.]

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

The Trade Union Act (1871) Amendment Act, 1876.

(39 & 40 Vict., c. 22.)

1. This Act and the Trade Union Act, 1871, herein-after termed the principal Act, shall be construed as one Act, and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876." Construction and short title.

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875. Trade unions to be within a 28 of Friendly Societies Act, 1875.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch": The said section shall be read and construed as if immediately after the herein-before recited words there were Amendment of a 8 of principal Act.

¹ As to Northern Ireland, see Government of Ireland (Companies, Societies, etc.) Order, 1922 (Stat. R. & O., No. 184/1922).

inserted the words " or of the trustees of the trade union, if the rules of the trade union so provide."

Provision in case of absence, etc., of trustee.

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Jurisdiction in offences.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

Registry of unions doing business in more than one country.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the

privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

7. Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

Life Assurance Companies Act not to apply to registered unions.

[Repealed by Assurance Companies Act, 1909, s. 37, Schedule I X.]

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases:

Withdrawal or cancelling of certificate.

- (1) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct:
- (2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice

to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

Membership of minors.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

Nomination.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at or sent to the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding one hundred pounds¹ shall be paid at his decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

Change of name.

11. A trade union may, with the approval in writing of the chief registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

Amalgamation.

12. *Any two or more trade unions may if in the case of each or every such trade union, or on a ballot being taken, the votes*

¹ Originally fifty pounds; one hundred has been substituted by s. 3 of the Provident Nominations and Small Intestacies Act, 1883.

of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal,¹ become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation, signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

Registration of changes of names and amalgamations.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same shall be sent within fourteen days thereafter to the central office herein-before mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

Dissolution.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same,

Penalty for failure to give notice.

¹ As amended by Trade Union (Amalgamation) Act, 1917 (*infra*, p. 222).

is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the chief or any assistant registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Definition of
"trade union"
altered.

16. [First paragraph repealed by the Statute Law Revision Act, 1883.]

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

The Trade Disputes Act, 1906.

(6 Edw. VII, c. 47.)

An Act to provide for the regulation of Trades Unions and Trade Disputes.

[21st December, 1906.]

Amendment of
law of conspiracy
in the case of
trade disputes.
39 & 50 Vict.,
c. 86.

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875 :—

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

Peaceful
picketing.

2.—(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.¹

(2) Section seven of the Conspiracy and Protection of

¹ But see section 3, of the Trade Disputes and Trade Unions Act, 1927 (*infra*, p. 223-8).

Property Act, 1875, is hereby repealed from "attending at or near" to the end of the section.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

Removal of liability for interfering with another person's business, etc.

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious acts alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

Prohibition of actions of tort against trade unions.

(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 Trades Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

24 & 25 Vict., c. 21.

5.—(1) This Act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this Act may be cited together as the Trade Union Acts, 1871 to 1906.

Short title and construction.

(2) In this Act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words "between employers and workmen" shall be repealed.

Trade Union Act, 1913.

(2 & 3 Geo. V, c. 30.)

An Act to amend the Law with respect to the objects and powers of Trade Unions.

[7th March, 1913.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Amendment
of law as to
objects and
powers of
trade unions.

1.—(1) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts, 1871 to 1906, so long as the combination is a trade union as defined by this Act, and, subject to the provisions of this Act as to the furtherance of political objects, any such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

89 & 40 Vict.,
c. 22.

(2) For the purposes of this Act, the expression "statutory objects" means the objects mentioned in section sixteen of the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

Definition of
trade union.

2.—(1) The expression "trade union" for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects: Provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered.

(2) The Registrar of Friendly Societies shall not register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects, and may withdraw the certificate of registration of any such registered trade union if the constitution of the union

has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects.

(3) Any unregistered trade union may, if they think fit, at any time without registering the union apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of this Act, and the Registrar, if satisfied, having regard to the constitution of the union and the mode in which the union is being carried on, that the principal objects of the union are statutory objects, and that the union is actually carried on for those objects, shall grant such a certificate, but the Registrar may, on an application made by any person to him for the purpose, withdraw any such certificate if satisfied, after giving the union an opportunity of being heard, that the certificate is no longer justified.

(4) Any person aggrieved by any refusal of the Registrar to register a combination as a trade union, or to give a certificate that an unregistered trade union is a trade union within the meaning of this Act, or by the withdrawal under this section of a certificate of registration, or of a certificate that an unregistered union is a trade union within the meaning of this Act, may appeal to the High Court, or in Scotland to the Court of Session, within the time and in the manner and on the conditions directed by rules of court.

(5) A certificate of the Registrar that a trade union is a trade union within the meaning of this Act shall, so long as it is in force, be conclusive for all purposes.

3.—(1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

Restriction on application of funds for certain political purposes.

(a) That any payments in the furtherance of those

objects are to be made out of a separate fund (in this Act referred to as the political fund of the union): and for the exemption in accordance with this Act of any member of the union from any obligation to contribute to such a fund if he gives notice in accordance with this Act that he objects to contribute¹: and

- (b) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar of Friendly Societies, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order of the Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the county court, may be enforced as if it had been an order of the county court. In the application of this provision to Scotland the sheriff court shall be substituted for the county court, and "interdict" shall be substituted for "injunction."

(3) The political objects to which this section applies are the expenditure of money—

- (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connexion with his candidature or election; or
- (b) on the holding of any meeting or the distribution

¹ Repealed by Trade Disputes and Trade Union Act, 1927, and Schedule (*infra*, p. 223-8).

- of any literature or documents in support of any such candidate or prospective candidate ; or
- (c) on the maintenance of any person who is a member of Parliament or who holds a public office ; or
 - (d) in connexion with the registration of electors or the selection of a candidate for Parliament or any public office ; or
 - (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distributions of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression " public office " in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(4) A resolution under this section approving political objects as an object of the union shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(5) The provisions of this Act as to the application of the funds of a union for political purposes shall apply to a union which is in whole or in part an association or combination of other unions as if the individual members of the component unions were the members of that union and not the unions ; but nothing in this Act shall prevent any such component union from collecting from any of their members who are not exempt on behalf of the association or combination any contributions to the political fund of the association or combination.

4.—(1) A ballot for the purposes of this Act shall be taken in accordance with rules of the union to be approved for the purpose, whether the union is registered or not, by the Registrar of Friendly Societies, but the Registrar of Friendly Societies shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured.

Approval of rules.

(2) If the Registrar of Friendly Societies is satisfied, and certifies, that rules for the purpose of a ballot under this Act or rules made for other purposes of this Act which require approval by the Registrar, have been approved by

a majority of members of a trade union, whether registered or not, voting for the purpose, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

Definition of Registrar of Friendly Societies.

7. The Registrar of Friendly Societies means in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in England or Wales, the Chief Registrar of Friendly Societies, and in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in Scotland or Ireland, the Assistant Registrar of Friendly Societies for Scotland or Ireland respectively.

SCHEDULE.¹

Form of Exemption Notice.

Section 84

Name of Trade Union

Political Fund (Exemption Notice).

I hereby give notice that I object to contribute to the Political Fund of the Union, and am in consequence exempt, in manner provided by the Trade Union Act, 1913, from contributing to that fund.

A.B.

Address

day of _____ 19 .

Trade Union (Amalgamation) Act, 1917.

(7 & 8 Geo. V, c. 24.)

An Act to amend the Trade Union Act Amendment Act, 1876, with respect to the amalgamation of Trade Unions.

[10th July, 1917.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—

2. This Act may be cited as the Trade Union (Amalgamation) Act, 1917, and the Trade Union Acts, 1871 to 1913, and this Act may be cited together as the Trade Union Acts, 1871 to 1917.

¹ ss. 5 and 6 and the Schedule to the 1913 Act have been repealed by the Trade Disputes and Trade Unions Act, 1927, and Schedule.

Trade Disputes and Trade Unions Act, 1927.

(17 & 18 Geo. V, c. 22.)

An Act to declare and amend the law relating to trade disputes and trade unions, to regulate the position of civil servants and persons employed by public authorities in respect of membership of trade unions and similar organisations, to extend section five of the Conspiracy, and Protection of Property Act, 1875, and for other purposes connected with the purposes aforesaid.

[29th July, 1927.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) It is hereby declared—

Illegal strikes
and lock-outs.

(a) that any strike is illegal if it—

- (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; and
- (ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community; and

(b) that any lock-out is illegal if it—

- (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the employers locking-out are engaged; and
- (ii) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community:

and it is further declared that it is illegal to commence, or continue, or to apply any sums in furtherance or support of, any such illegal strike or lock-out.

For the purposes of the foregoing provisions—

- (a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry; and
- (b) without prejudice to the generality of the expression "trade or industry" workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board or other similar body, or in accordance with agreements made with the same employer or group of employers.

(2) If any person declares, instigates, incites others to take part in or otherwise acts in furtherance of a strike or lock-out, declared by this Act to be illegal, he shall be liable on summary conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months, or on conviction on indictment to imprisonment for a term not exceeding two years:

Provided that no person shall be deemed to have committed an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment.

(3) Where any person is charged before any court with an offence

Pu

under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the safe custody of the person charged, but this subsection shall not apply to Scotland, or to any prosecution instituted by or on behalf of the Director of Public Prosecutions.

6 Edw. VII, c. 47.
10 & 11
Geo. V, c. 55.

(4) The provisions of the Trade Disputes Act, 1906, shall not, nor shall the second proviso to subsection (1) of section two of the Emergency Powers Act, 1920, apply to any act done in contemplation or furtherance of a strike or lock-out which is by this Act declared to be illegal, and any such acts shall not be deemed for the purposes of any enactment to be done in contemplation or furtherance of a trade dispute :

Provided that no person shall be deemed to have committed an offence under any regulations made under the Emergency Powers Act, 1920, by reason only of his having ceased work or having refused to continue to work or to accept employment.

Protection of
persons refusing
to take part in
illegal strikes or
lock-outs.

2.—(1) No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act declared to be illegal, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) No provisions of the Trade Union Acts, 1871 to 1917, limiting the proceedings which may be entertained by any court, and nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as the court thinks just.

(3) As respects any strike or lock-out before the passing of this Act but since this first day of May, nineteen hundred and twenty-six, which, according to the law as declared by this Act, was illegal, this section shall have effect as if it had been in operation when the strike or lock-out took place.

Prevention of
intimidation, &c.

3.—(1) It is hereby declared that it is unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace ; and attending at or near any house or place in such numbers or in such manner as is by this subsection declared to be unlawful shall be deemed to be a watching or besetting of that house or place within the meaning of section seven of the Conspiracy, and Protection of Property Act, 1875.

(2) In this section the expression "to intimidate" means to cause

35 & 39 Vict.,
c. 86.

portionately less than it had been in 1879. This is tantamount to bankruptcy on the part of trade unionism.

In drawing our comparisons we started with the last year of the 70's, which marked the beginning of the rising curve. We have, however, given in italics the figures relating to the *middle* year of the same decade, up to which we brought our figures of the previous period (p. 220). Had our comparison been made with these earlier figures, the progress would appear even more insignificant. We would find that in the textile group wages at the end of the 70's and the beginning of the 80's were lower than in 1875 and although they rose afterwards, this rise was so slow that as late as 1905 wages were still lower than in 1875. And this in a first class industry! It was only in 1906 that wages began to rise above the level which had been attained in the middle of the 70's, so that the entire advance for the years 1875-1909 amounted only to 2.5 points. The situation in the coal-mining industry was slightly better. There too, the figure for 1875 was higher than those of the following years and was only reached again fifteen years later, in 1890, but only for a moment, as wages immediately fell again, surpassing the level of 1875 in 1899 and the following years. In this way the miners' wages rose by four points in the course of 23 years, and the entire advance over the period under review, that is during 34 years, amounted to some ten points. Among the metal workers things were little better, but even so, wages in 1885 stood below the level of ten years previously. After 1885 they began to rise and finally reached the level of 20 per cent. above that of 1875. Even this figure, the result of the struggle of various unions in the metal trades over a whole generation, is extremely low. The building trades showed the greatest advance. Their wages began to rise not at the end, but in the middle of the 70's and surpassed the level of 1875 by 14 per cent. towards the close of the century. At that figure they remained stationary for the next ten years, so that these fourteen points cover the entire advance for the period 1875-1909—as though the wages suddenly grew tired of advancing rapidly, and for very weariness could move no longer. The aggregate result for all the four groups amounts to this: the figures for 1875 were surpassed by about 0.5 points at the end of the 15 years following and were definitely left behind in 1897, that is, after 22 years; while over the period of 34 years, the net result was an advance of about 9 points. This looks more like stagnation than progress, and reflects the achieve-

may in special circumstances allow, and if the rules of any trade union are not so amended and approved as aforesaid they shall be deemed not to comply with the requirements of the said section.

(4) Notwithstanding anything in this Act, until the thirty-first day of December, nineteen hundred and twenty-seven, it shall be lawful to require any member of a trade union to contribute to the political fund of the trade union as if this Act had not been passed.

(5) If the Registrar is satisfied, and certifies, that rules for the purpose of complying with the provisions of this section, or for the purposes of the Trade Union Act, 1913, as amended by this Act, which require approval by the Registrar have been approved by a majority of the members of a trade union voting for the purpose, by the executive or other governing body of such a trade union, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, the Registrar may approve those rules and those rules shall thereupon have effect as rules of the union notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(6) Section sixteen of the Trade Union Act, 1871 (which provides for the transmission to the Registrar of annual returns by registered trade unions), shall apply to every unregistered trade union so far as respects the receipts, funds, effects, expenditure, assets and liabilities of the political fund thereof.

5.—(1) Amongst the regulations as to the conditions of service in His Majesty's civil establishments there shall be included regulations prohibiting established civil servants from being members, delegates, or representatives of any organisation of which the primary object is to influence or affect the remuneration and conditions of employment of its members, unless the organisation is an organisation of which the membership is confined to persons employed by or under the Crown and is an organisation which complies with such provisions as may be contained in the regulations for securing that it is in all respects independent of, and not affiliated to, any such organisation as aforesaid the membership of which is not confined to persons employed by or under the Crown or any federation comprising such organisations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organisation:

Provided that the regulations made in compliance with the provisions of this section shall not prevent—

- (a) any person who is at the commencement of this Act an established civil servant from remaining a member of any trade union or organisation not composed wholly or mainly of persons employed by or under the Crown of which he had, at the commencement of this Act, been a member for more than six months, if under the rules thereof there had on the fourth day of April, nineteen hundred and twenty-seven, accrued or begun to accrue to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children; or
- (b) any person employed at the commencement of this Act by or under the Crown who thereafter becomes an established civil servant from remaining, so long as he is not appointed to a position of supervision or management, a member of any trade union or organisation, not composed wholly or mainly of persons employed by or under the Crown, of which he is a member at the date when he so becomes an established civil servant, if under

84 & 85 Vict;
c. 81.

Regulations as to organisations of which established civil servants may be members.

the rules thereof there has at that date accrued, or begun to accrue, to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ; or

(c) a person who in addition to being an established civil servant is, apart from his service as such, also engaged in some other employment or occupation from being a member, delegate, or representative of any trade union or organisation, of which the primary object is to influence or affect the remuneration or conditions of employment of persons engaged in that employment or occupation.

(a) Subject as hereinafter provided, any established civil servant who contravenes the regulations made under this section shall be disqualified for being a member of the Civil Service :

Provided that, in the case of a first offence, a civil servant shall forthwith be warned by the head of his department, and the said disqualification shall not take effect if within one month after such warning the civil servant ceases to contravene the said regulations.

(3) In this section—

(a) the expression "established civil servant" means a person serving in an established capacity in the permanent service of the Crown, and includes any person who, having been granted a certificate by the Civil Service Commissioners, is serving a probationary period preliminary to establishment ; and

(b) the expression "conditions of employment" means in relation to persons other than persons employed by or under the Crown the conditions of employment of persons employed under a contract of service.

Provisions as to persons employed by local and other public authorities.

6.—(1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any condition upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.

(2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration or acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union.

(3) Any condition imposed in contravention of this section shall be void.

(4) There shall be added to section five of the Conspiracy, and Protection of Property Act, 1875, the following provision, that is to say :—

"If any person employed by a local or other public authority wilfully breaks a contract of service with that authority, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community, he shall be liable, on summary conviction, to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months."

7. Without prejudice to the right of any person having a sufficient interest in the relief sought to sue or apply for an injunction to restrain any application of the funds of a trade union in contravention of the provisions of this Act, an injunction restraining any application of the funds of a trade union in contravention of the provisions of section one of this Act may be granted at the suit or upon the application of the Attorney-General.

Restraint of application of funds of trade unions, &c., in contravention of s. 1 of Act.

In the application of this section to Scotland, there shall be substituted therein for references to an injunction references to an interdict, and for the reference to the Attorney-General a reference to the Lord Advocate.

Short title,
construction,
interpretation,
extent and
repeal.

8.—(1) This Act may be cited as the Trade Disputes and Trade Unions Act, 1927, and shall be construed as one with the Trade Union Acts, 1871 to 1917, and this Act and the Trade Union Acts, 1871 to 1917, may be cited together as the Trade Union Acts, 1871 to 1927.

(2) For the purposes of this Act—

- (a) the expression "strike" means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment;
- (b) the expression "lock-out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment; and
- (c) a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof.

(3) This Act shall not extend to Northern Ireland, except that the provisions of this Act relating to civil servants shall apply to civil servants employed in Northern Ireland in the administration of services with respect to which the Parliament of Northern Ireland has not power to make laws.

(4) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

SCHEDULES.

Section 4.

FIRST SCHEDULE.

Form of Political Fund Contribution Notice.

Name of Trade Union

Name of member's branch (if any)

POLITICAL FUND (CONTRIBUTION NOTICE).

I HEREBY give notice that I am willing, and agree, to contribute to the political fund of the Union and I understand that I shall, in consequence, be liable to contribute to that fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the union a written notice of withdrawal: I also understand that after delivering such a notice of withdrawal I shall still continue to be liable to contribute to the political fund until the next following first day of January.

A.....B.....
Address

Membership number (if any)

.....day of.....19.....

Section 8.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. V, c. 80.	Trade Union Act, 1913.	In subsection (1) of section three the words from "and for the exemption" to "objects to contribute"; subsection (2) of section four; section five; section six; the Schedule.

B

REGULATIONS

Regulations dated November 1, 1876, made by the Secretary of State as to the Registration of Trade Unions as amended by Regulations made by the Secretary of State, April 29, 1890, and July 28, 1922, and by the Secretary for Scotland, May 8, 1890, and July 28, 1922.¹

TRADE UNION ACTS, 1871² AND 1876.³

(1) In the following Regulations and Forms⁴ the terms "chief registrar" and "assistant registrar" means respectively the chief registrar and assistant registrar of Friendly Societies, and the term "central office" means the central office established under the Friendly Societies Act, 1875.

(2) The registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(3) Upon an application for the registration of a trade union which is already in operation, the registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.

(4) Application for registry of a trade union shall be made in Form A subjoined to these regulations, and shall be accompanied by two printed copies of the rules, marked and signed, as mentioned in the said form.

(5) The certificate of registry of a trade union shall be in Form B subjoined to these Regulations.

¹ The amending Regulations which were made under the Acts of 1871 and 1876 and the Secretary of Scotland Act, 1887, are printed at length in *Statutory Rules and Orders*, 1890 and 1922.

² 34 & 35 Vict., c. 31.

³ For forms see Appendix C, p. 235 *infra*.

⁴ 39 & 40 Vict., c. 22.

(6) An alteration of the rules of a trade union may be either—

- (a) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution or of more than one or all of those modes ; or,
- (b) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

(7) An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be made in the Form C annexed hereto, and must be accompanied by a statutory declaration in Form D hereto annexed, and by a printed copy of the existing rules, and by the following documents :—

- (a) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked O and signed by each of the applicants.
- (b) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked O and signed by each of the applicants.

The registrar, before registering the partial alteration of rules, shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above-mentioned Acts to be provided for by the rules of a registered trade union.

(8) The certificate of registry of a partial alteration shall be in Form E annexed hereto, and shall be delivered to the applicants, attached to one of the copies of the new rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules.

(9) An application for the registration of a complete alteration of rules shall be made by seven members of the trade union, and shall be in Form F annexed hereto, and must be accompanied by a statutory declaration in Form D annexed hereto, and by a printed copy of the existing rules

and by two printed copies of the new rules, each copy being marked P and signed by each of the applicants; and the registrar before registering the new set of rules shall ascertain that it provides for all matters which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union.

(10) The certificate of registry of a complete alteration of rules shall be in Form G annexed hereto, and shall be delivered to the applicants attached to one of the copies of the new set of rules.

Recording of Rules already Registered.

(11) An application to record in one country rules or amendments of rules registered in another shall be made by the secretary or other officer of the trade union in Form H or I hereto annexed, and shall be accompanied by a copy of such rules or amendments duly authenticated.

Withdrawal or Cancelling of Certificate of Registration.

(12) Every request by a trade union for withdrawal or cancelling of its certificate of registration shall be sent to the chief registrar or assistant registrar for Scotland or for Ireland, as the case may require in Form J annexed hereto.

(13) Notice before withdrawal or cancelling of certificate, where required, shall be in Form K annexed hereto.

(14) The withdrawal or cancelling of certificate shall be in Form L annexed hereto.

Registered Office.

(15) Notice of the situation of the registered office of a trade union, and of any change therein, shall be given to the registrar in Form M annexed hereto.

(15A) The removal of the registered office of a trade union from one country within the meaning of section 6 of the Trade Union Act Amendment Act, 1876, to another shall not render it necessary to re-register the trade union in the country in which its new registered office is situate.

(15B) All matters requiring registry shall be registered in and returns and notices sent to the registrar of the country in which the registered office of a trade union is for the time being situate; copies of matters requiring registry being forwarded for recording to the registrar of each of the other countries in which it is carrying or intending to carry on business.

Change of Name.

(16) The application for approval, and notice of change

of name of a trade union shall be in Form N annexed hereto, and shall be sent in duplicate, accompanied by a statutory declaration in Form O annexed hereto, to the chief registrar, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require. The chief or assistant registrar, before approving the change of name shall ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling the same as to be calculated to deceive; and if the change of name be approved, the word "approved" shall be written at the foot or end of each copy of the application, and the same shall be signed by the chief registrar or by such assistant registrar as the case may require, and shall be transmitted by him to the central office for registry.

Transfer of Stock.

(17) Every application to the registrar to direct a transfer of stock shall follow, as near as may be, Form P annexed hereto, and shall be accompanied by a statutory declaration in Form Q annexed hereto, or as near thereto as the fact admit, and by the certificate of the stock in respect of which the application is made.

(18) Before making the application, the trade union shall submit to the registrar for examination a draft copy, on foolscap paper, written on one side only, of the proposed application and declaration.

(19) The registrar, before directing the transfer, may require further proof of any statement in the application.

(20) The registrar shall give a direction in Form R annexed hereto, so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants, endorsed with the word "registered" and duly authenticated.

Dissolution.

(21) When a trade union is dissolved, notice of the dissolution shall be given to the central office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require, in duplicate in Form S annexed hereto, and the central office or assistant registrar shall return one copy to the trade union, endorsed with the word "registered" and duly authenticated.

Amalgamation.

(22) Where two or more trade unions become amalgamated together, notice shall be given to the central office in duplicate in Form T annexed hereto, accompanied by statutory declarations from each such trade union in Form U annexed hereto, and the central office shall return to the amalgamated trade union one copy of the notice, endorsed with the word "registered" and duly authenticated.

Nominations.

(23) Every registered trade union shall keep a record or register of all nominations made by the members, and of all revocations and variations of the same, and for the recording or registering of every such nomination, revocation, or variation the rules of the trade union may require the member nominating to pay a sum not exceeding three-pence.

Fees.

(24) The following fees shall be payable in advance under the Acts :—

	<i>£</i>	<i>s.</i>	<i>d.</i>
For the certificate of registry of a Trade Union	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For a certificate that an unregistered Trade Union is a Trade Union	2	0	0
For the certificate of registry of a change of name	1	0	0
For a direction to transfer stock	2	0	0
For registry of notice of a dissolution	0	5	0
For registry of amalgamation, by each Trade Union amalgamating	1	0	0
For every document (except as otherwise provided) required to be signed by a Registrar, or to bear the seal of the Central Office	0	5	0
For every inspection on the same day of documents (whether one or more), in the custody of the Registrar, relating to one and the same Trade Union	0	2	6

For a copy or extract of any document in custody of the Registrar, not exceeding 216 words 1s. 6d., and if exceeding that number 6d. per folio of 72 words, in addition to the fee, if any, for the signature of a Registrar, or seal of the Central Office.

For any document certified as a true copy of a document in the custody of the Registrar, when the copy so certified is not made by the Registrar, 9d. for the examination of such copy, and if the copy exceeds 216 words, for every additional folio of 72 words, 3d. (in addition to the fee for the signature of a Registrar or seal of the Central Office). Provided that the fees to be charged for the examination of copies of rules or alterations of rules for recording in another country shall not be greater in respect of each country in which they are to be recorded than the fees paid for the certificate of registry of the Union or of the alteration of rules.

No fee is payable for—

The cancelling or withdrawal of a certificate of registry.

Any notice of change of office.

Any document or copy of a document supplied to a public department.

The Chief Registrar may also dispense with the fee for inspection of documents in cases where he may consider it in the public interest to do so.

Authentication of Documents by Registrar.

(25) Every document under the Trade Union Acts, 1871¹ and 1876,² bearing the seal of the central office, or the signature of the chief registrar or the assistant registrar for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the regulations made thereunder.

Rich. Assheton Cross.

Whitehall,

1st November, 1876.

¹ 34 & 35 Vict., c. 31.

² 39 & 40 Vict., c. 23.

C

FORMS

ORDERED TO BE USED IN REGISTRATION, ETC., OF TRADE UNIONS UNDER THE TRADE UNION ACTS, 1871 AND 1876.

For societies registered in Scotland the address "43, New Register House, Edinburgh," and in Ireland "9, Upper Ormond Quay, Dublin," will be substituted in the following forms for "28, Abingdon Street, Westminster."

FORM A.—Reg. 4.

Trade Union Acts, 1871 and 1876, 34 & 35 Vict., c. 31* and 39 & 40 Vict., c. 22.

Application for Registry of Trade Union.

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered is _____, as set forth in Rule No. _____.

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

3. The place of meeting for the business of the* _____ * Name of trade union. and the office to which all communications and notices may be addressed, is at _____, as set forth in Rule No. _____.

4. The* _____ was established on the _____ day of _____ * Name of trade union.

5. The whole of the objects for which the* _____ is * Name of trade union. established and the purposes for which the funds thereof are applicable are set forth in Rule No. _____.

6. The conditions under which members may become entitled to benefits assured are set forth in Rule No. _____.

7. The fines and forfeitures to be imposed on members are set forth in Rule No. _____.

8. The manner of making, altering, amending, and rescinding rules is set forth in Rule No.

9. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No.

10. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No.

11. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No.

12. The provision for the manner of dissolving the trade union is set forth in Rule No.

13. Accompanying this application are sent—

1. Two printed copies, each marked A, of the rules.

2. A list, marked B, of the titles and names of the officers.

3. A general statement, marked C,* showing—

(a) The assets and liabilities of the † at the date up to which the statement is made out.

(b) The receipts and expenditure of † during the year preceding the date ‡ up to which the statement is made out, such expenditure being set forth under separate heads corresponding to the several objects of the trade union.

14. § We have been duly authorised by the trade union to make this application on its behalf, such authorisation consisting of

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 19

In paragraph 14 must be stated whether the authority to make this application was given by a "resolution of a general meeting of the trade union," or, if not, in what other way it was given.

The two copies of rules must be signed by the seven members signing this application.

The application should be *dated*, and forwarded to "The Registrar of Friendly Societies, 28, Abingdon Street, Westminster, S.W."

* This will only be necessary in cases where the trade union has been in operation more than a year previous to the date of the application.

† Name of trade union.

‡ This date will be fixed by the registrar.

§ This will only be necessary where the trade union has been in operation before the date of the application.

FORM B.—Reg. 5.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Trade Union.

It is hereby certified that the _____ has been registered under the Trade Union Acts, 1871 and 1876, this day of _____ 19 _____.

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

FORM C.—Reg. 7.

Trade Union Acts, 1871 and 1876.

Application for Registry of partial Alteration of Rules.

Trade Union. Register No.

1. This application for the registry of a partial alteration of the rules of the _____ Trade Union, is made by the seven persons whose names are subscribed at the foot hereof.

With this application are sent—

- (a) A printed copy of the registered rules marked to show where and in what way they are altered :
- (b) Two printed [or written] copies of the alteration, each marked O, signed by each of the applicants :
- (c) A statutory declaration of an officer of this trade union, that in making the alteration of rules now submitted for registry the rules of the _____ Trade Union were duly complied with.

2. We have been duly authorised by the _____ Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting on the * day of _____ 19 _____.

(Signed) 1.

2.

3.

4.

5.

6.

7.

†

day of _____ 19 _____.

To the Registrar of Friendly Societies,
Abingdon Street, Westminster.

* Here insert the date, or if there was no such resolution, state in what other way the authorisation was given.

† Here insert the date.

FORM F.—Reg. 9.

Trade Union Acts, 1871 and 1876.

*Form of Application for Registry of Complete Alteration
of Rules.*

Trade Union. Register No.

1. This application for the registry of a complete alteration of the registered rules of the Trade Union is made by the seven persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registry is the substitution of the set of rules, two printed copies of which (each copy marked P, and signed by the applicants) accompany this application, for the set of rules already registered.

3. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered is as set forth in Rule No.

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name, or so nearly resembles the same as to cause confusion.

4. The place of meeting for the business of the * , * Name of trade union. and the office to which all communications and notices may be addressed, is at , as set forth in Rule No.

5. The * was established on the day of * Name of trade union.

6. The whole of the objects for which the * is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No. * Name of trade union.

7. The conditions under which members may become entitled to benefits assured are set forth in Rule No.

8. The fines and forfeitures to be imposed on members are set forth in Rule No.

9. The manner of making, altering, amending, and rescinding rules is set forth in Rule No.

10. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No.

11. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No.

12. The provision for the inspection of the books and

Qu

names of the members by every person having an interest in the funds is set forth in Rule No.

13. The provision for the manner of dissolving the trade union is set forth in Rule No.

14. This application is accompanied by a statutory declaration of _____, an officer of the said trade union, to the effect that in making the alteration of rules now submitted for registry the rules of the trade union were duly complied with.

15. We have been duly authorised by the _____ Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting held on the _____ day of _____

* Here insert the date, or, if there was no such resolution, state in what other way authorisation was given.

(Signed) 1.

2.

3.

4.

5.

6.

7.

day of

19

The Registrar of Friendly Societies,
28, Abingdon Street,
Westminster, S.W.

FORM G.—Reg. 10.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Complete Alteration of Rules.

Trade Union.

Register No.

It is hereby certified that the set of rules, copy whereof is appended hereto, has been registered under the above-mentioned Acts in substitution for the set of rules already registered for the _____ Trade Union this _____ day of

19

[Seal of Central Office or signature of Assistant Registrar for Scotland or Ireland.]

FORM H.—Reg. II.

Trade Union Acts, 1871 and 1876.

Application to record Rules registered in another country.

Trade Union.

Register No. [Add England, Scotland, or Ireland
as the case may be.]

To the Registrar of Friendly Societies.

Application to record the rules of the Trade Union
is made by the secretary of the same.

1. The trade union carries [or intends to carry] on business in [Scotland, Ireland, or England, as the case may be] as well as in England, Scotland, or Ireland where the same is registered.

2. With this application are sent two printed [or written] copies of the rules of the trade union, one of such copies being under the seal of the central office [or under the signature of the Assistant Registrar for Scotland or Ireland].

(Signed)

Secretary.

Registered Office
Date day of

FORM I.—Reg. II.

Trade Union Acts, 1871 and 1876.

Application to record Amendments of Rules already recorded.

Trade Union.

Register No. [Add England, Scotland, or Ireland,
as the case may be.]Recorded in [Scotland, Ireland, or England, as
the case may be] No.

To the Registrar of Friendly Societies.

Application to record an amendment of the rules of the
Trade Union is made by the secretary of the same.

1. The trade union carries on business in [Scotland, Ireland, or England, as the case may be] as well as in [England, Scotland, or Ireland] where the same is registered.

2. The rules of the trade union have been already recorded in [Scotland, Ireland, or England, as the case may be].

3. With this application are sent two printed [or written] copies of an amendment of such rules lately registered, one of such copies being under the seal of the central office [or under the signature of the Assistant Registrar for Scotland or Ireland].

(Signed)

Secretary.

Registered Office
Date

day of

FORM J.—Reg. 12.

Trade Union Acts, 1871 and 1876.

Request to withdraw or cancel Certificate of Registry.

Trade Union.

Register No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

To the Chief Registrar [or in the case of a trade union registered and doing business in Scotland or Ireland exclusively, to the Assistant Registrar for Scotland or Ireland, as the case may be].

1. The above-mentioned trade union desires that its certificate of registry under the Trade Union Acts may be withdrawn [or cancelled] on the following ground, viz., [state reason for desiring withdrawal or cancelling of certificate of registry] and at a general meeting* duly held on the

* If not at a general meeting, state in what manner the request has been determined upon.

day of 19, it was resolved as follows :—
" That the trustees be authorised to request the Chief [or Assistant] Registrar to withdraw [or cancel] the certificate of registry of this trade union."

2. This request is made by the trustees accordingly.

} Trustees.

Registered Office
Date

day of

19 .

FORM K.—Reg. 13.

Trade Union Acts, 1871 and 1876.

Notice before withdrawal or cancelling of Certificate of Registry.
Trade Union.

Register No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be].

Notice is hereby given to the above-mentioned trade union that it is the intention of the Chief Registrar [or Assistant Registrar for Scotland or Ireland, as the case may be] to proceed on the^a day of 19 . to cancel [or to withdraw] the registry of the trade union, unless cause be shown to the contrary in the meantime.

^aThis will be not less than two months after the date of the notice.

The ground of such proposed cancelling [or withdrawal] is that the certificate of registry has been obtained by fraud [or mistake], or that the registry of the trade union has become void under s. 6 of the Trade Union Act, 1871, or that the trade union has wilfully and after notice from me violated the provisions of the above-mentioned Acts or has ceased to exist. [The facts should be briefly specified where practicable.]

(Signature)

Chief Registrar [or Assistant Registrar for Scotland or Ireland].

Date day of 19 .

FORM L.—Reg. 14.

Trade Union Acts, 1871 and 1876.

Withdrawal or cancelling of Certificate of Registry.
Trade Union.

Register No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

The certificate of registry of the above-mentioned trade union is hereby withdrawn or cancelled at its request [or as the case may be]. The Registrar may, if he thinks fit, add a statement, as in Form K, of the ground of the cancelling.

(Signed)

Chief Registrar [or Assistant Registrar for Scotland or Ireland].

Date day of 19 .

FORM M.—Reg. 15.

Trade Union Acts, 1871 and 1876.

Notice of Change of Registered Office.

Trade Union. Register No.

[If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

To the Registrar of Friendly Societies.

Notice is hereby given that the registered office of the above-mentioned trade union is removed from in the parish of , and is now situate at in the parish of in the county of .

Dated this day of 19 .

} Trustees.

NOTE.—Until this notice has been given, the trade union will not have complied with the provisions of the Act.

This part to be detached by the registrar when the notice is registered, and returned to the trade union.

Received this day of notice of removal of the registered office of the , Register No. , to in the county of [Seal of Central Office, or signature of a Registrar.]

FORM N.—Reg. 16.

Trade Union Acts, 1871 and 1876.

Application for Approval, and Notice of Change of Name.

Name already registered

Registered No. *[If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]*

To the Chief Registrar [or Assistant Registrar for Ireland or Scotland, as the case may be] and Central Office.

Application for approval of a change of name of the above-named trade union is made by the three persons whose names are subscribed at the foot hereof.

The following is a copy of a resolution passed by the consent of two-thirds of the total number of members of the trade union :—

[The resolution to be copied at length.]

And notice of the said change is hereby given to the central office for registry thereby.

	1.	} Members.
	2.	
Secretary.	3.	
Registered Office .	4.	
	5.	
Date day of 19 .	6.	
	7.	

FORM O.—Reg. 16.

Trade Union Acts, 1871 and 1876.

Declaration to accompany Application for Approval of Change of Name.

County of _____ to wit.

Name of trade union _____

Register No. _____ [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

I, _____ of _____, the secretary of the above-named trade union, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of the 39 & 40 Vict., c. 22, in respect of change of name, have been complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of His Majesty's justices of the peace for the said county of _____, at _____ in the said county, this _____ day of _____ 19 _____

FORM P.—Reg. 17.

Trade Union Acts, 1871 and 1876.

Application for Direction to transfer Stock.

Trade Union. _____

Register No. _____

Application for a direction to transfer stock is made by the four persons whose names are subscribed at the foot hereof, being the secretary and three members of the above-mentioned trade union.

1. The trade union on the _____ day of _____, duly

This form applies (with the necessary modifications) to a branch of a trade union.

appointed , of in the county of [here name and describe all the trustees then appointed] to be trustees.

2. On the day of the sum of was invested in the purchase of stock transferable at the Bank of England [or Ireland] in the names of the said trustees, and the same is still standing in their names, as follows [state exactly in what names the stock stands] :-

[This clause will not be necessary where the application is in consequence of the mere removal of a trustee.]

3. The said is absent from Great Britain [or Ireland] [or became bankrupt on the day of , or filed a petition (or executed a deed) for liquidation of his affairs by assignment or arrangement or for composition with his creditors, on the day of , or has become a lunatic, or died on the day of , or has not been heard of for years, and it is not known whether he is living or dead].

4. On the day of the trade union duly removed the said from his office of trustee, and appointed [give full name and description] in his place.

5. Since such removal application has been made in writing to the said [removed trustee] to join in the transfer of the said stock into the names of the said [here give the names of the other trustees, and of the new trustee appointed in the place of the one removed] as trustees for the said trade union, but he has refused to comply [or has not complied] with such application. [This paragraph may be omitted, or varied, as the facts require.]

6. This application to the Registrar is made pursuant to 39 & 40 Vict., c. 22, s. 4, that he may direct the said stock to be transferred into the names of the said as trustees for the trade union by [This blank should be filled by the names of the surviving or continuing trustees (if any), and if they be willing and able to make the transfer; or if there is no such trustee, or if any such trustee refuse or be unable to make the transfer, then by the words the Accountant-General, or Deputy, or Assistant Accountant-General of the said Bank; and a full statement of the facts and of the grounds of such refusal or inability should be made.]

Secretary.
Member.
Member.
Member.

Registered Office
Date day of 19
To the Registrar.

FORM Q.—Reg. 17.

Trade Union Act, 1871 and 1876.

*Declaration verifying Statements in an Application for
Direction to transfer Stock.*This form applies
(with the neces-
sary modifica-
tions) to a
branch of a
trade union.

County of _____ to wit.

Trade Union.

Register No. _____

I, _____ of _____, in the county of _____, do solemnly and sincerely declare that I am the secretary of the above-mentioned trade union.

That _____ and _____ whose names are subscribed at the foot of the application hereto annexed, are members of the said trade union.

That on the _____ day of _____ 19____, and therein mentioned, were appointed trustees of the said trade union.

That on the _____ day of _____ 19____, the sum of _____ was invested in the purchase of _____ stock, transferable at the Bank of England [or Ireland] in the names of the said trustees, and the declarant believes that it is still standing in their names, as follows [state as in Form P] :—

That the said _____ is absent from Great Britain [or Ireland] [or became bankrupt, etc., as in Form P].

That on the _____ day of _____ 19____, the said _____ was removed from his office of trustee, and _____ was appointed in his place.

That since such removal application has been made in writing to the said _____ to join in the transfer of the said stock into the names of the said _____ as trustees for the said trade union, but he has refused to comply [or has not complied] with such application. [This paragraph may be omitted or varied as the facts require.]

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one
of His Majesty's justices of the
peace for the said county of _____
at _____, in the said
county, this _____ day of _____
19____.

This form applies (with the necessary modifications) to a branch of a trade union.

FORM R.—Reg. 20.

Trade Union Acts, 1871 and 1876.

Direction by the Registrar to transfer Stock.

Whereas it has been made to appear to the Registrar that stock, transferable at the Bank of England [or Ireland] is now standing in the names of and as trustees of Trade Union registered under the above-mentioned Acts.

And that the said is absent from Great Britain [or Ireland, or became bankrupt, etc., as in Form P].

And that has been appointed trustee of the said trade union in place of the said

* The paragraphs marked (a) or (b) will be used as the case requires.

*(a) The registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict., c. 22, that the said sum of so standing in the books of the Governor and Company of the Bank of England [or Ireland] in the names of the said be transferred in the said books by the said into the names of the said

(b) And that there is no surviving or continuing trustee of the said trade union, or that the surviving or continuing trustee or trustees refuse or are unable to transfer the said stock.

The registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict., c. 22, that the said sum of , so standing in the books of the Governor and Company of the Bank of England [or Ireland] be transferred in the said books by the Accountant-General, or Deputy or Assistant Accountant-General, of the said Bank into the names of the said

Address

Date day of 19 .

[Seal of Central Office, and signature of Chief Registrar or Assistant Registrar for England, or signature of Assistant Registrar for Scotland or Ireland.]

APPENDIX

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FORM S.—Reg. 21.

Trade Union Acts, 1871 and 1876.

Notice of Dissolution.

Trade Union. Register No.

To the Central Office, 28, Abingdon Street,
Westminster [orTo the Assistant Registrar for Scotland or
for Ireland, as the case may require].

Notice is hereby given that the above-mentioned trade
union was dissolved in pursuance of the rules thereof on
the day of 19 .

1.	Secretary.
2.	Member.
3.	Member.
4.	Member.
5.	Member.
6.	Member.
7.	Member.
8.	Member.

Name and address to which
registered copy is to be
returned. }

Date day of 19 .

FORM T.—Reg. 22.

Trade Union Acts, 1871 and 1876.

Notice of Amalgamation of Trade Unions.

(A) Trade Union. Register No.

(B) Trade Union. Register No.

[and so on if more than two].

To the Central Office, 28, Abingdon Street,
Westminster.

Notice is hereby given, that by the consent of two-thirds
of the whole number of members of each or every of the
above-mentioned trade unions they have resolved to be-
come amalgamated together as one trade union.

Register No. _____
County _____

ANNUAL RETURN.

FORM A.R. 15.

T.U. No. 1.

TRADE UNION ACTS, 1871 AND 1876.

ANNUAL RETURN PRESCRIBED BY THE REGISTRAR FOR A REGISTERED TRADE UNION.

Year ending 31st December, 1909.

[The Trade Union's Balance Sheet cannot be accepted as a substitute for this Return.]

This Return is to be sent to the Registrar before the following 1st of June.
A Copy of the Auditor's Report, if any, should also be sent, together with a Copy of the Printed Statement of Accounts.

Name of Trade Union _____

Number of Branches (if any) _____

Is the Trade Union a Branch of any other registered Trade Union? _____

If so, state the Name and Register Number of that Trade Union _____

Date of commencement of Trade Union _____ I _____

When first Registered _____ I _____

Date of Registration of last Alteration of Rules _____ I _____

Names of the present Trustees _____

Do the Rules of the Trade Union require Security to be given by Officers? _____ If so, state the number of the Rule _____

Name and Address of every Officer in receipt or charge of money, the Amount of Security given by each, and whether by Bond, or Guarantee Society¹ } _____ £
} _____ £
} _____ £

State what provision (if any) is made for Old Age _____

The Audit for the Year has been conducted by _____ who were appointed Auditors by _____ under the authority of Rule No. _____

Registered Office of the Trade Union² _____ in the County of _____

Date 1910.

¹ If the names are more than can be conveniently inserted here, they may be added (with the amount of security given) on a separate sheet.

² State full Postal Address.

RETURN AS TO MEMBERS.

	MALES.	FEMALES.	TOTAL.
Number of Members on the Books at the beginning of the year	_____	_____	_____
Number of Members admitted during the Year Together	_____	_____	_____
Number of Members who left during the Year, from whatever cause	_____	_____	_____
Total Number of Members on the Books at 31st December, 1909	_____	_____	_____
AGES OF MEMBERS AT THE END OF THE YEAR.			
Number of Members 16 and under 20 years of age	_____	_____	_____
" " 20 " 50 "	_____	_____	_____
" " 50 " 65 "	_____	_____	_____
" " 65 years of age and over .	_____	_____	_____
Total, as above	_____	_____	_____

N.B.—With this Annual Return must be sent to the Registrar :—

(1) A copy of the rules of the Trade Union as they exist at date to which this Return is made out.

(2) A copy of all alterations of rules and new rules made by the Trade Union during the year preceding the date up to which this Return is made out.

The address to which Rules, Returns, and other Documents should be sent is as follows :

ENGLAND AND WALES : Registry of Friendly Societies, Central Office, 28, Abingdon Street, Westminster, London, S.W.

SCOTLAND : Registry of Friendly Societies, 3A, Howe Street, Edinburgh.

IRELAND : Registry of Friendly Societies, 12, South Frederick Street, Dublin.

[For particulars as to changes of officers see fourth page of this Return.]

GENERAL STATEMENT of the Income and Expenditure, Funds and Effect
Dr. (1.) **GENERAL**

INCOME.		£	s.	d.
Fines			
Entrance Fees			
Levies			
Contributions Paid by Members			
Where separate contributions are paid to particular Funds, this should be stated separately as follows :—				
To the _____ Fund			
To the _____ Fund			
To the _____ Fund			
Interest received or accrued during the year on the Funds invested			
Emblems, Rules, Cards, etc., sold			
Contributions from other Trade Unions (specify them)			
Other Contributions (specify them)			
Other Receipts (specify them)			
Total Income				
Amount of Funds at the beginning of the year, as per last year's Balance-sheet				
Total				

Dr. (2.) **BALANCE SHEET**

LIABILITIES.		£	s.	d.
To Amount of the several Funds, viz :— (Here set forth separately the amount of each of the Funds.)				
Total Amount of Funds as shown in General Account (see above, A)				
Debts (if any) legally incurred by the Trustees on behalf of Trade Union ¹				
Cash due to Treasurer (if any)				
Other Liabilities ²				
Total				

¹ Specify their nature.
² Specify them.

Signatures of Trustees } _____ Residing at _____
 _____ Residing at _____
 _____ Residing at _____

The undersigned, having had access to all the books and accounts of the same with the accounts and vouchers³ relating thereto, now sign the said Signature of 1st Auditor.
 Address _____
 Calling or Profession _____

If in any respect these accounts are incorrect, unvouched, or not in accordance which a copy is to be sent to the Registrar with this Statement.

¹ In certifying the Trade Union's Investments as shown in the Balance-sheet, the Auditor Assets of the Trade Union, and also inspect the Bank Pass Book and the Post Office Savings.
² The Annual Return of a Trade Union having Branches should include the Income and Branches have not been submitted to the Auditors signing this Return, the fact should be

of the TRADE UNION, from 1st January to 31st December, 1909.
ACCOUNT. Cr.

EXPENDITURE.

	£	s.	d.	£	s.	d.
<i>Trade Benefits :—</i>						
Strike Pay to _____ Members						
Lock-out Pay to _____ Members						
Allowance to _____ Members seeking employment ..						
Other payments (specify them) to _____ Members						
Contributions to other Trade Unions						
<i>Other Benefits :—</i>						
Sickness Pay to _____ Members						
Superannuation Pay to _____ Members						
Sums paid at death of _____ Members						
Accident benefit to _____ Members						
Medical aid (including Salary of Surgeon)						
Other payments (specify them) to _____ Members						
<i>Management Expenses :—</i>						
Salaries of Paid Officers (specify them)						
Rent						
Stationery and Printing, Postage, etc.						
Law Expenses						
Other expenses of Management (specify them)						
Total Expenditure						
Amount of Funds at end of the year, as per Balance-sheet below (A)						
Total						

* Carry the totals of inner column into outer column.

FUNDS AND EFFECTS. Cr.

ASSETS.

	Rate per cent. of Interest yielded.	£	s.	d.
<i>By Investments :—</i>				
1. In the _____ Savings Bank				
2. In the Public Funds ⁵				
3. Upon Government Securities in Great Britain or Ireland				
4. Upon Real Securities in Great Britain or Ireland				
5. In the purchase of land				
6. In the erection of offices and buildings				
7. In ⁴				
Cash in the Post Office Savings Bank				
Cash in hand ⁵				
Other assets (if any) ⁶				
Deficiency (if Liabilities exceed Assets)				
Total				

⁵ State amount and description of stock.

⁴ If on other securities state them separately.
⁵ State in whose hands.
⁶ Specify them.

Signature of Secretary _____
Residing at⁷ _____

Trade Union, and having examined the foregoing General Statement and verified as found to be correct, duly vouched, and in accordance with law.⁹

⁷ Give postal address.

Signature of 2nd Auditor _____
Address _____
Calling or Profession _____

Date _____ 1910.

with law, the Auditors are to make a Special Report to the Trade Union, of

should in all cases actually inspect the Mortgage deeds and other securities representing the Bank Book and ascertain that they have been duly made up and balanced to the 31st December. Expenditure, Funds and Effects of all the Branches. If the Books and the Accounts of the stated.

Reg. No. _____
Name of Trade Union _____

T.U. No. 4

TRADE UNION ACTS, 1871 AND 1876.

ANNUAL RETURN OF CHANGE OF OFFICERS DURING THE YEAR ENDING
31ST DECEMBER, 1909.

(If there has been no change during the year the form below should be endorsed
to that effect.)

Date of Change.	Title of Officer.	Name of Officer retiring.	Cause of retirement.	Name of Officer appointed.	Address.

In this space any further particulars may be inserted which are necessary to explain the facts set forth in the Return, or to throw light upon the history of the Trade Union during the year.

_____ } *Signatures
of
Trustees.*

TABLE OF STATUTES

- (1799) 39 Geo. III, c. 81 (Unlawful Combinations of Workmen), 7.
- (1800) 39 & 40 Geo. III, c. 106 (Unlawful Combinations of Workmen), 7, 8.
- (1824) 5 Geo. IV, c. 95 (Combinations of Workmen), 8.
- (1825) 6 Geo. IV, c. 129 (Combinations of Workmen), 8, 76, 85.
- (1859) 22 Vict., c. 34 (Molestation of Workmen), 9, 86.
- (1868) 31 & 32 Vict., c. 116 (Larceny), 45.
- (1869) 32 & 33 Vict., c. 61 (Trade Unions Funds Protection), 11.
- (1871) 34 & 35 Vict., c. 31 (Trade Union), 9, 12, 20-48, 52-66.
- (1871) 34 & 35 Vict., c. 32 (Criminal Law Amendment), 9, 86.
- (1875) 38 & 39 Vict., c. 24 (Falsification of Accounts), 45.
- (1875) 38 & 39 Vict., c. 86 (Conspiracy and Protection of Property), 9, 86-102.
- (1876) 39 & 40 Vict., c. 22 (Trade Union Amendment), 18, 20-48.
- (1876) 39 & 40 Vict., c. 61 (Poor Law Amendment), 116.
- (1879) 42 & 43 Vict., c. 49 (Summary Jurisdiction), 57.
- (1883) 46 & 47 Vict., c. 47 (Provident Nominations and Small Intestacies), 46-7.
- (1894) 57 & 58 Vict., c. 60 (Merchant Shipping), 178-81.
- (1896) 59 & 60 Vict., c. 25 (Friendly Societies), 112-19.
- (1896) 59 & 60 Vict., c. 30 (Conciliation), 141-5.
- (1906) 6 Edw. VII, c. 47 (Trade Disputes), 10, 72-5, 86-102.
- (1908) 8 Edw. VII, c. 49 (Companies' Consolidation), 20, 156-7.
- (1909) 9 Edw. VII, c. 49 (Assurance Companies), 20-1.
- (1913) 2 & 3 Geo. V, c. 30 (Trade Union), 18, 20, 103-11.
- (1917) 7 & 8 Geo. V, c. 24 (Trade Union Amalgamation), 37-8.
- (1918) 8 & 9 Geo. V, c. 40 (Income Tax), 24.
- (1919) 9 & 10 Geo. V, c. 3 (Industrial Courts), 145-6.
- (1919) 9 & 10 Geo. V, c. 100 (Electricity Supply), 93.
- (1920) 10 & 11 Geo. V, c. 30 (Unemployment Insurance), 132-40.
- (1920) 10 & 11 Geo. V, c. 35 (Emergency Powers), 77, 85-7.
- (1924) 14 & 15 Geo. V, c. 11 (Friendly Societies), 113-19.
- (1924) 14 & 15 Geo. V, c. 30 (Unemployment Insurance), 133-40.
- (1924) 14 & 15 Geo. V, c. 38 (National Health Insurance), 120-31.

- (1925) 15 & 16 Geo. V, c. 69 (Unemployment Insurance),
 132-40.
 (1925) 15 & 16 Geo. V, c. 70 (Widows' Pensions), 121.
 (1925) 15 & 16 Geo. V, c. 84 (Workmen's Compensation),
 147-92.
 (1927) 17 & 18 Geo. V, c. 22 (Trade Disputes and Trade
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ABBREVIATIONS

ENGLAND

A. C.	. . .	Appeal Cases.
Asp. M. L. C.	. . .	Aspinall's Maritime Law Cases.
B. W. C. C.	. . .	Butterworth's Workmen's Com- pensation Cases.
Car. & P.	. . .	Carrington & Payne's Reports.
C. C. C. Sess. Papers	. . .	Central Criminal Court (Session Papers).
Co. Rep.	. . .	Coke's Reports.
Cox C. C.	. . .	Cox's Criminal Cases.
Cro. Jac.	. . .	Croke's Reports.
Den. C. C.	. . .	Denison's Crown Cases.
E. & B.	. . .	Ellis & Blackburn.
F. Soc. Cas.	. . .	Diprose & Gammon's Friendly Society Cases.
J. P.	. . .	Justice of the Peace.
K. B. D.	. . .	King's Bench Division.
L. J.	. . .	Law Journal.
L. R.	. . .	Law Reports.
L. T.	. . .	Law Times.
Man. & G.	. . .	Manning & Grainger's Reports.
M. & Rob.	. . .	Moody & Robinson.
M. & W.	. . .	Meeson & Welsby.
P. Wms.	. . .	Peere Williams' Reports.
Q. B. D.	. . .	Queen's Bench Division.
S. J.	. . .	Solicitors' Journal.
T. L. R.	. . .	Times Law Reporter.
W. N.	. . .	Weekly Notes.
W. R.	. . .	Weekly Reporter.

ABBREVIATIONS

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SCOTLAND

Adam	Adams' Reports,	Justiciary
					Courts of Scotland.	
D.	Dunlop.	
Cowp.	Cowper's Scottish	Justiciary
					Cases.	
F.	.	.	.	.	Fraser.	
R.	.	.	.	.	Rettie.	
S. C.	.	.	.	.	Session Cases.	
S. L. R.	.	.	.	.	Scottish Law Reporter.	
S. L. T.	.	.	.	.	Scots Law Times.	
White	.	.	.	.	White's Reports,	Justiciary
					Courts of Scotland.	

IRELAND

Ir. L. R.	.	.	.	.	Irish Law Reports.	
Ir. L. T.	.	.	.	.	Irish Law Times.	

LEGAL TERMS DEFINED

(1) *Common Law*

This is judge-made law fashioned out of ancient native customs common throughout this country. Evolved largely between 1150 and 1250.

(2) *Civil Law*

This is private law which deals with the legal relations between one subject and another in the *private rights* arising out of the ownership of property and out of the legal obligations which make up the law of contract and tort.

(3) *Criminal Law*

Deals with the unlawful acts and defaults which are offences against *the public* and render the persons guilty of such acts or defaults liable to legal punishment.

(4) *The Law of Torts*

A tort is a breach of civil or private law which is not a breach of contract, but which gives rise to an action for damages: e.g. libel.

(5) *Statute Law*

Embodies all Acts of Parliament, together with the Statutory Rules and Orders issued thereunder.

(6) *Case Law*

Embodies the interpretation of the Common Law and Statute Law as made by the judges in the legal cases which are decided by them from time to time.

(7) *Obiter Dictum*

i.e. a thing said by the way. Obiter dicta are such statements of the law made by the judges as are not necessarily called for by the case before them.

(8) *Public Authority*

A public authority is any corporation, association, or body, which is responsible for the execution of an Act of Parliament or other public duty: e.g. the Port of London Authority.

(9) *Maintenance*

Maintenance is an actionable wrong which arises where a person officiously intermeddles in a suit, pending in a court, in which he is not concerned, by assisting either party with money.

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MODEL RULES FOR POLITICAL FUND

FORM 2A.

MODEL A.

.....Union.
[Register No. T.]

PARTIAL ALTERATION OF RULES.

Rescind the Rules for the political fund of the union 1 to 18 inclusive, and substitute the following :—

RULES FOR POLITICAL FUND.

1. The objects of the trade union shall include the furtherance of the political objects to which section 3 of the Trade Union Act, 1913, applies, that is to say, the expenditure of money—

- (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or
- (b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or
- (c) on the maintenance of any person who is a member of Parliament or who holds a public office ; or
- (d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office ; or
- (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act, that is to say, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

The expression " public office " in this rule means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

2. Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called the political fund of the union).

No assets of the union, other than the amount raised by the separate levy provided in Rule 7, shall be carried to the political fund of the union, and no assets of the union other than those forming part of the political fund of the union shall be directly or indirectly applied or charged in furtherance of any such political objects as aforesaid ; and any charge in contravention of this provision shall be void.

3. No member of the union shall be required to make any contribution to the political fund of the union unless he has delivered, as provided in Rule 6, at the head office or some branch office of the union notice in writing, in the form set out in Rule 4, of his willingness to contribute to that fund, and has not withdrawn the notice in manner provided in Rule 5. Every member of the union who has not delivered such a notice or who, having delivered such a notice, has withdrawn it in manner provided in Rule 5, is to be deemed for the purposes of these rules to be a member who is exempt from the obligation to contribute to the political fund of the union.

4. The form of notice of willingness to contribute to the political fund of the union is as follows :—

FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

Name of Trade Union
Name of member's branch (if any)

Political Fund (Contribution Notice).

I hereby give notice that I am willing, and agree, to contribute to the political fund of the Union and I understand that I shall, in consequence, be liable to contribute to that fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the union a written notice of withdrawal ; I also understand that after delivering such notice of withdrawal I

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shall still continue to be liable to contribute to the political fund until the next following first day of January.

A.....B.....
 Address.....
 Membership number (if any).....
day of.....19.....

5. If at any time a member of the union, who has delivered such a notice as is provided for in Rules 3 and 4, gives notice of withdrawal thereof, delivered, as provided in Rule 6, at the head office or at any branch office of the union, he shall be deemed to have withdrawn the notice as from the first day of January next after the delivery of the notice of withdrawal.

6. The notices referred to in Rules 3, 4 and 5 may be delivered personally by the member or by any authorised agent of the member, and any notice shall be deemed to have been delivered at the head or a branch office of the union if it has been sent by post properly addressed to that office.

7. All contributions to the political fund of the union from members of the union who are liable to contribute to that fund shall be levied and made separately from any contributions to the other funds of the union.

The contribution to the political fund of the union shall be the sum of d. payable [annually] [quarterly] [monthly] [weekly] on

8. A member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or disadvantage as compared with other members of the union (except in relation to the control or management of the political fund of the union) by reason of his being so exempt.

9. Contribution to the political fund of the union shall not be made a condition for admission to the union.

10. If any member alleges that he is aggrieved by a breach of any of these rules for the political fund of the union, he may complain to the Chief Registrar of Friendly Societies, and the Chief Registrar, after giving the complainant and any representative of the union an opportunity of being heard, may if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just in the circumstances; and any such order of the Chief Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the county court, may be enforced as if it had been an order of the county court.

11. The executive committee shall cause to be printed, as soon as practicable after the approval and registration of these rules for the political fund of the union, a number of copies thereof having at the end copies of the certificates of approval and registration sufficient for the members of the union, and a further number for new members, and shall send to the secretary of each branch a number of copies sufficient for the members of the branch. The secretary of each branch shall take steps to secure that every member of the branch, so far as practicable, receives a copy of these rules, and shall supply a copy to any member at his request. A copy thereof shall also be supplied forthwith to every new member on his admission to the union.

The provisions of this rule shall apply to the present alteration and any subsequent alterations of the rules for the political fund of the union.

12. A return in respect to the political fund of the union shall be transmitted by the union to the Chief Registrar of Friendly Societies before the first day of June in every year prepared and made up to such date and in such form and comprising such particulars as the Chief Registrar may from time to time require, and every member of the union shall be entitled to receive a copy of such return, on application to the treasurer or secretary of the union, without making any payment for the same.

Signatures of three members of the executive body of the trade union.

1.....
 2.....
 3.....

Form No.

MODEL B.

.....Union.

[Register No.

T.]

PARTIAL ALTERATION OF RULES.

Rule 2. Add at the end of the rule :-

No assets of the union, other than the amount raised by the separate levy provided in Rule 7, shall be carried to the political fund of the union, and no assets of

Su

272 MODEL RULES FOR POLITICAL FUND

the union other than those forming part of the political fund of the union shall be directly or indirectly applied or charged in furtherance of any such political objects as aforesaid; and any charge in contravention of this provision shall be void.

Rule 3. Rescind the whole rule and substitute :—

No member of the union shall be required to make any contribution to the political fund of the union unless he has delivered, as provided in Rule 3, at the head office or some branch office of the union notice in writing, in the form set out in Rule 4, of his willingness to contribute to that fund, and has not withdrawn the notice in manner provided in Rule 5. Every member of the union who has not delivered such a notice or who, having delivered such a notice, has withdrawn it in manner provided in Rule 5, is to be deemed for the purpose of these rules to be a member exempt from the obligation to contribute to the political fund of the union.

Rule 4. Rescind the whole rule and substitute :—

The form of notice of willingness to contribute to the political fund of the union is as follows :—

FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

Name of Trade Union
Name of member's branch (if any)

Political Fund (Contribution Notice).

I hereby give notice that I am willing, and agree, to contribute to the political fund of the Union and I understand that I shall, in consequence, be liable to contribute to that fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the union a written notice of withdrawal; I also understand that after delivering such a notice of withdrawal I shall continue to be liable to contribute to the political fund until the next following first day of January.

A B

Address

Membership number (if any)

..... day of 19.....
Rule 5. Rescind the whole rule and substitute :—

If at any time a member of the union, who has delivered such a notice as is provided for in Rules 3 and 4, gives notice of withdrawal thereof, delivered, as provided in Rule 4, at the head office or at any branch office of the union, he shall be deemed to have withdrawn the notice as from the first day of January next after the delivery of the notice of withdrawal.

Rule 6. Rescind the whole rule and substitute :—

The notices referred to in Rules 3, 4 and 5 may be delivered personally by the member or by any authorised agent of the member, and any notice shall be deemed to have been delivered at the head office or a branch office of the union if it has been sent by post properly addressed to that office.

Rule 7. Rescind the whole rule and substitute :—

All contributions to the political fund of the union from members of the union who are liable to contribute to that fund shall be levied and made separately from any contributions to the other funds of the union.

The contribution of the political fund of the union shall be the sum of d.
payable [annually] [quarterly] [monthly] [weekly] on

Rule 11. Rescind the whole rule.

Rule 12. Add at the end of the rule :—

The provisions of this rule shall apply to the present alteration and any subsequent alterations of the rules for the political fund of the union.

Signatures of three members of the executive body of the trade union.

1

2

3

Fas Payable 10s.

FORM 5A.

TRADE UNION ACTS, 1871 to 1927.

Application for Approval and Registry of Partial Alteration of Rules under the Trade Disputes and Trade Unions Act, 1927.

.....Trade Union.

Register No.T.

This application for the approval and registry of a partial alteration of the rules of

MODEL RULES FOR POLITICAL FUND 273

the above-named trade union is made by three members of the executive body of the said trade union whose names are subscribed at the foot hereof.

With this application are sent—

(a) Two printed copies of the alteration, each marked O, signed by each of the applicants.

(b) A statutory declaration of an officer of the trade union, that in making the alteration of rules now submitted for approval and registry, section 4 (b) of the Trade Disputes and Trade Unions Act, 1927, was duly complied with.

(Signed) 1
 2
 3

..... day of 192..
 To the Chief Registrar of Friendly Societies,
 17 North Audley Street, W.1.
 Name and address to which registered copy is to be sent.....

FORM 6A. TRADE UNION ACTS, 1871 to 1927.

Declaration accompanying Alteration of Rules under the Trade Disputes and Trade Unions Act, 1927.

..... Trade Union.
 Register No. T.

I, of an officer of the above named trade union, do solemnly and sincerely declare that in making the alteration of the rules of the trade union, the application for the approval and registry of which is appended to this declaration, section 4 (b) of the Trade Disputes and Trade Unions Act, 1927, has been duly complied with, such alteration having been approved by the executive committee of the trade union on*

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

..... Signature of Declarant.
 †Taken and received before me, one of His Majesty's Justices of the Peace for the County of

..... at
 in the said county, this day of 192..

‡ This is to be altered as the case required where any declaration is made before a Borough Magistrate or Commissioner for Oaths.

FORM 6A. TRADE DISPUTES AND TRADE UNIONS ACT, 1927.

Certificate under Section 4 (b).

I hereby certify, in pursuance of s. 4 (b) of the above Act, that the amended rules for the political fund under the said Act of the Union [Register No. T.] have been approved by the executive or other governing body of the said trade union.

Given this day of 192 ..
 Copy kept. Chief Registrar.

FORM 11A. TRADE DISPUTES AND TRADE UNIONS ACT, 1927.

Certificate under Section 4 (b).

..... Union. [Register No. T.]
 I hereby approve the amended rules for the political fund of the above union for the purposes of section 4 (b) of the above Act.

Given this day of 192 ..
 Copy kept. Chief Registrar.

* If the executive or other governing body of the union is called by some other name, or if the alteration has been approved by a majority of the members or of the delegates, the necessary alteration should be made in the body of the form.

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